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ORGANIZATION OF THE WORK OF THE SESSION: ASSISTANCE TO GUATEMALA IN THE FIELD OF HUMAN RIGHTS

Report by the independent Expert, Mr. Christian Tomuschat, on the situation of human rights in Guatemala, prepared in accordance with paragraph 13 of Commission resolution 1992/78

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INTRODUCTION

1. The Commission on Human Rights has been considering the situation of human rights in Guatemala since its thirty-fifth session. At that time, the Commission adopted decision 12 (XXXV) of 14 March 1979, in which it decided to send a telegram to the Government in connection with the assassination of Mr. Alberto Fuentes Mohr, ex-Minister for Foreign Affairs and Finance and a former member of the United Nations Secretariat.

2. At its thirty-seventh session in 1981, the Commission had before it a report by the Secretary-General on the situation in Guatemala (E/CN.4/1438). Subsequently, on 11 March 1981, the Commission adopted resolution 33 (XXXVII), in which it requested the Secretary-General to continue his efforts to establish direct contacts with the Government. Soon afterwards, the General Assembly had before it a further report by the Secretary-General (A/36/705); it adopted decision 36/435 of 16 December 1981, in which it requested the Secretary-General to continue his efforts and the Government to cooperate further with the Secretary-General.

3. At its thirty-eighth session, in resolution 1982/31, on 11 March 1982, the Commission decided for the first time to request its Chairman to appoint a Special Rapporteur of the Commission, whose mandate would be to make a thorough study of the human rights situation in Guatemala. The following year, the Commission reiterated the same request to its Chairman, in resolution 1983/37 of 8 March 1983. Consequently, the Chairman appointed as Special Rapporteur of the Commission Viscount Colville of Culross, United Kingdom, whose mandate was renewed annually in 1984 and 1985. In discharging his mandate, Viscount Colville of Culross submitted the following reports to the General Assembly and the Commission on Human Rights: A/38/485, E/CN.4/1984/30, A/39/635, E/CN.4/1985/19, A/40/865 and E/CN.4/1986/23.

4. The mandate of the Special Rapporteur was terminated in 1986, when the Commission, at its forty-second session, adopted resolution 1986/62 of 13 March 1986 (para. 9). At the same time, the Commission requested its Chairman to appoint a special representative to receive and evaluate the information provided by the Government on the implementation of the new legal order for the protection of human rights (paras. 7 and 8). The Commission appointed as its Special Representative Viscount Colville of Culross, who submitted a report at the next session of the Commission (E/CN.4/1987/24). Subsequently, the Commission adopted resolution 1987/53 on 11 March 1987, in which it decided to terminate the mandate of the Special Representative.

5. Also, in the same resolution 1987/53, the Commission requested the Secretary-General to appoint an expert with a view to assisting the Government through direct contacts, in taking the necessary action for the further restoration of human rights. Following this resolution, the Secretary-General appointed as Expert, on 24 June 1987, Mr. Hector Gros Espiell, of Uruguay, who submitted three reports at successive sessions of the Commission (E/CN.4/1988/42, E/CN.4/1989/39, and E/CN.4/1990/45), his mandate having been

extended in Commission resolutions 1988/50 and 1989/74. Mr. Gros Espiell, however, informed the Commission, during its forty-sixth session, that he would not be able to accept the renewal of his mandate as an Expert, due to his recent appointment as the Minister for Foreign Affairs of his country.

6. In these circumstances, the Commission on Human Rights adopted at its forty-sixth session resolution 1990/80 of 7 March 1990 in which it requested the Secretary-General:

> "... to continue to provide the Government of Guatemala with such advisory services and other forms of assistance in the field of human rights as may be necessary to foster and strengthen the consolidation of the democratic process, and promote a human rights culture" (para. 13).

7. The Commission further requested the Secretary-General:

> "... to appoint an independent expert as his representative to examine the human rights situation in Guatemala and continue assistance to the Government in the field of human rights who, within the framework of his mandate, shall prepare a report with appropriate recommendations for submission to the Commission at its forty-seventh session" (para. 14).

8. In compliance with the request contained in paragraph 14 of Commission resolution 1990/80, the Secretary-General decided on 6 July 1990 to appoint Mr. Christian Tomuschat, Federal Republic of Germany, as his representative and independent Expert to consider the situation of human rights in Guatemala and to continue assistance to the Government in the field of human rights.

9. In fulfilment of his mandate, the present independent Expert visited Guatemala four times (from September to October 1990, in February 1991 and in October and February 1992) and informed the Commission about the human rights situation in that country in the reports contained in documents E/CN.4/1991/5 and Add.1 and E/CN.4/1992/5. On the basis of these reports, on 6 March 1992 the Commission adopted resolution 1992/78 entitled "Assistance to Guatemala in the field of human rights" in which it requested the Secretary-General, inter alia, "to extend the mandate of the Independent Expert so that he may continue to examine the human rights situation in Guatemala and provide assistance to the Government in the field of human rights and submit to the Commission at its forty-ninth session a report assessing the measures taken by the Government in accordance with the recommendations made to it" (para. 13). It also decided to consider the question at its forty-ninth session under the agenda item entitled "Advisory services in the field of human rights" or the agenda item entitled "Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories," in the light of the report mentioned in paragraph 13 of the present resolution and the situation of human rights and fundamental freedoms in Guatemala" (para. 14).

10. In its turn, the Economic and Social Council, in its decision 1992/246 of 20 July 1992, approved the Commission's request to extend the mandate of the independent Expert.

11. On 27 August 1992 the Subcommission on Prevention of Discrimination and Protection of Minorities adopted resolution 1992/18 in which, inter alia, it expressed its appreciation of the contribution to the peace process made by the Independent Expert, as well as by the Observer appointed by the Secretary-General, and the National Conciliator (para. 9); it urged both parties, the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) to "reach an agreement on human rights as rapidly as possible and to continue the peace negotiations..." (para. 10). The Subcommission also urged the Government to intensify investigations into violations of human rights, to facilitate the activities of human rights organizations, to ensure the independence of the judicial system, and to respond to the requests of the indigenous peoples through the adoption of practical measures to improve their economic, social and cultural conditions (paras. 4 and 5 of the same resolution). Lastly, the Subcommission exhorted the authorities to pay attention to the recommendations made by the Independent Expert, "... principally the abolition of the system for the protection of the citizenry and of the voluntary civil self-defence committees, within the context of the negotiations between the Government and the Unidad Revolucionaria Nacional Guatemalteca (URNG)".

12. In fulfilment of his present mandate, the independent Expert visited Guatemala for a fifth time from 26 September to 6 October 1992 and, at the end of his visit, held consultations and interviews at United Nations Headquarters in New York and in Mexico. In the course of a subsequent visit to United Nations Headquarters, he was able to have further consultations. The Expert's programme of work during his most recent visit to Guatemala and his visits to United Nations Headquarters in New York and to Mexico are outlined in the annex to this report.

13. As in previous years, the Expert continued to consult all the accessible and reliable sources in order to acquaint himself with the situation of human rights in Guatemala. In doing so, he was afforded extensive cooperation by the Government of Guatemala before, during and after his fifth official visit to the country. In addition, the Expert was free to consult a large number of persons and Guatemalan human rights, social, trade union, economic and indigenous organizations. He also consulted the documentation received from international organizations, intergovernmental organizations (especially the Organization of American States and the International Labour Organisation), other United Nations agencies (in particular, the Office of the United Nations High Commissioner for Refugees) and non-governmental international organizations.

14. The Expert took all the information gathered and compared it with the provisions contained in the Universal Declaration of Human Rights, the international human rights treaties to which Guatemala is a party, such as the International Covenant on Civil and Political Rights (to which Guatemala acceded on 5 May 1992), the International Covenant on Economic, Social and Cultural Rights (to which Guatemala acceded on 19 May 1988), the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (to which Guatemala acceded on 5 January 1990), the Convention on the Rights of the Child (which Guatemala ratified on 6 June 1990), the Slavery Convention and the Supplementary Convention on the Abolition of

Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, the Convention and the Protocol relating to the Status of Refugees, and many international labour conventions, including in particular Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, 1948, Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, 1949, and Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, 1958. Guatemala is also a party to the American Convention on Human Rights, having recognized the litigious jurisdiction of the Inter-American Court of Human Rights with effect from 20 February 1987, and to the Inter-American Convention to Prevent and Punish Torture. Lastly, in the field of international humanitarian law, Guatemala ratified the four 1949 Geneva Conventions on 14 May 1952; it also ratified the two 1977 Protocols additional to the Geneva Conventions on 19 October 1987, and on 13 September 1989 it signed the Headquarters Agreement for the establishment of an International Committee of the Red Cross (ICRC) Office in Guatemala.

15. All the provisions of international human rights law accepted by Guatemala form part of the country's internal law, because under article 46 of the 1985 Constitution "it is established as a general principle that, in matters of human rights, treaties and conventions accepted and ratified by Guatemala take precedence over internal law". This principle is repeated in article 3 of the Amparo, Habeas Corpus and Constitutionality Act of 8 January 1986. With regard to the Universal Declaration of Human Rights, Decree No. 54-86 of 1 October 1986, which was amended by Decree No. 32-87 of 28 May 1987, establishes in article 8 that the Human Rights Procurator shall be a Congressional Commissioner for the defence of the human rights guaranteed by the Constitution, the Universal Declaration of Human Rights, and the international treaties accepted and ratified by Guatemala.

16. The Expert has been interpreting his mandate as having three parts: first, to report to the Commission about developments in the general human rights situation in Guatemala; for this purpose he submits duly contrasted information to enable the Commission to draw conclusions and make recommendations. Second, to advise and assist the Government in the field of human rights, making specific recommendations in his various reports. Third, purely humanitarian motives have prompted him on occasions to use his good offices with the Government of Guatemala in individual cases, on request, in order to try to remedy specific situations. In this latter connection, the success of the Expert's initiatives has been uneven, although in all cases they have been well received by the Government.

17. This report refers to events between January and October 1992. Other relevant earlier and subsequent information has been included when available and when considered appropriate.

I. POLITICAL DEVELOPMENTS IN 1992

A. The constitutional framework

18. There were no major changes in the institutional framework for the protection of human rights during the course of 1992. As in the past, the Human Rights Procurator, Ramiro de León Carpio, acted in the most courageous and impartial manner, without bending to political pressure or shading his findings to accord with the degree of political resistance he had to expect from the persons denounced. The entire staff of the central office, including two deputies, have once again established their reputation as being totally independent and incorruptible. On the other hand, the Human Rights Procurator faced some difficulties in selecting suitable candidates for the subsidiary offices which have now been opened in all Departments. It should also be observed that the effectiveness of the institution is somewhat hampered by its lack of power to apply sanctions. In keeping with the model of the ombudsman, the Human Rights Procurator has been denied any competence to impose penalties or to apply other sanctions himself. The relevant constitutional provisions (articles 274 and 275) were framed in the expectation that appropriate action would be undertaken by other state organs, in particular by the Public Prosecutor's office and by the competent tribunals, in case it would emerge that punishable offences had been committed. Nonetheless, the sole fact that there exists an institution that without any inhibitions carries out the requisite inquiries into allegations of criminal offences has a far-reaching deterrent effect. Guatemala today without the presence of the Human Rights Procurator would be unthinkable.

19. In accordance with the suggestions formulated by the Expert in his first report (E/CN.4/1991/5/Add.1), the Government of Guatemala created a Presidential Coordinating Commission on Executive Policy in the Field of Human Rights in July 1991. This Commission is now fully operative and has a sufficient number of staff. The Expert met with the executive director of the Commission, Mr. Bernardo Neumann, and was personally convincedthat the Commission performs useful work, in particular as a documentation centre where information on all major developments in the field of human rights can be obtained. The Expert also received a report from the Commission on the situation of human rights in Guatemala in the first six months of 1992.

20. It is obvious that in the fight against impunity the Public Prosecutor (Procurador General de la Nación) holds a pivotal position. Any indictment must be issued by him. The Expert notes that since Acisclo Valladares took office under the Government of President Serrano, a number of cases with a highly politicized background have been dealt with and are pending before the competent tribunals. In November 1992, Valladares had to resign from his office, at least provisionally, an antejuicio having been opened concerning him in connection with a criminal trial in which his brother was involved. Many observers believe that the effectiveness of criminal prosecution will be seriously affected by this loss of the helmsman of the prosecutorial authorities.

21. The National Congress adopted several important legal instruments in 1992. But its general reputation was shattered by a series of scandals. The Expert feels that the Congress could and should play a much more important role in the life of Guatemala. The deputies are the natural links between the population, in particular in the rural areas, and the governmental

institutions. If they listen carefully to their electorate, joining their efforts with those of all social organizations, including in particular the religious communities, a better climate for dialogue and mutual understanding can be created. It should also be a natural duty for every deputy to concern him- or herself with any case of political violence in the constituencies at home, thus showing their commitment to the individuals who sent them to represent their interests in the capital. Too much of a burden is put on the shoulders of the President of the Republic, too much is expected of the Government. Guatemalans must realize that the challenge of creating a national community less plagued by violence than it is today can be met only by the society as a whole. Every single citizen should reflect on what he or she can actually do to promote peaceful settlement of social conflicts. Indeed, there is no denying the fact that after an agreement with the URNG has been reached, many problems will remain; on the contrary, it is only then that it will be possible to face up to deep-seated structural problems. Only a Congress every member of which has won for him- or herself the confidence of the electorate by the conduct displayed in discharging his or her responsibilities will be able to stand up to that formidable challenge.

B. The peace negotiations

22. In his previous report (E/CN.4/1992/5, paras. 17 to 28) the Expert drew attention to the importance of the implementation in Guatemala of the Esquipulas II Accord of 1987, concluded between the heads of State of the five Central American Republics. This meant the establishment by the then President of the Republic, Vinicio Cerezo, of the National Reconciliation Commission presided over by Monsignor Rodolfo Quezada Toruño. As a first result of the dialogue between all sectors of society, this Commission, fully supported by the Government, concluded with a URNG delegation in Oslo on 10 March 1990 a "Basic Agreement for the Search for Peace by Political Means". Throughout 1990, in the presence of the Conciliator, Monsignor Quezada Toruño, and the Representative of the Secretary General of the United Nations, Francesco Vendrell, a series of meetings was held between representatives of URNG and the various political, social, religious and business sectors in Guatemala. When he entered office on 8 April 1991, the new President of the Republic of Guatemala, Jorge Serrano Elías, made public his "Initiative for the total peace of the nation", emphasizing that what he sought was to provide the bases for the lasting reconciliation of Guatemalans, giving the various parties to the conflict full opportunities to reintegrate themselves into their society, and strengthening the State governed the rule of law through new social welfare programmes, the restructuring of the public administration, and the reevaluation of Mayan culture.

23. An agreement on the negotiations on the search for peace by political means was concluded between the Government of Guatemala and URNG on 26 April 1991 at Mexico City, establishing the general framework for the negotiating process which was to lead to an agreement on a firm and lasting peace, the implementation of which was to be verified by the United Nations and other bodies designated jointly by the parties. Considerable progress was made on a general agenda of 11 items agreed by the parties, and at the meeting held at Querétaro, Mexico, from 22 to 25 July 1991 a framework agreement was reached on democratization (first part of item 1) which was disseminated widely by the two parties (E/CN.4/1992/5, paras. 18 and 19). At another meeting from 21 to 23 October 1991, again at Querétaro, Mexico, the parties began their consideration of the human rights item (second part of item 1). During this phase of the negotiations disagreements emerged concerning: the establishment

of a commission of truth and justice to enquire into violations of human rights since 1978; the abolition of the civilian self-defence patrols (PAC); the application of the Second Protocol additional to the Geneva Conventions of August 1949 to the conflict between the armed forces and URNG; and the date of entry into force of an agreement on human rights. The direct talks were suspended, but the parties agreed to continue an indirect dialogue, with the Conciliator and the Observer of the Secretary-General of the United Nations acting as the axes in this new "shuttle" between the parties to the conflict which continued for several months.

24. In February 1992 the Conciliator Monsignor Quezada Toruño drew attention to the significant progress made on the human rights item as a result of the "shuttle" meetings and the flexibility and desire to achieve agreement displayed by the parties. He also referred to the following human rights points on which agreement had been reached: a commitment to the general principles of human rights; the need to strengthen the arrangements for the protection of human rights (Judiciary, Office of the Public Prosecutor, and the Human Rights Procurator); the agreement of the parties on the need to eliminate impunity, and the commitment of the Government to take legal action to have enforced disappearances and extrajudicial executions declared crimes against mankind, meaning that the Government would not take any action of a legislative or other kind to prevent the prosecution of the perpetrators of such crimes even if they were protected by some special jurisdiction; the commitment of the Government to continue the purging and professional upgrading of the security forces and to introduce specific regulations on the bearing of arms; conscription into the armed forces which is neither forced nor discriminatory, with a commitment by the Government to bring in a new military service law; the need to protect bodies or persons working in the promotion and protection of human rights; compensation and/or assistance for victims of violations of human rights by means of governmental measures and programmes of a civil, social and economic nature; the need to establish a committee to record and investigate in detail cases or situations occurring between the beginning of the internal armed conflict and the signing of the final peace agreement; and, lastly, the need to create and put into operation a machinery for verification of human rights in Guatemala, with the Secretary-General of the United Nations requested to formulate a concrete proposal. On the same date the Conciliator stated that three important points in the global agreement still had to be dealt with: the position of the voluntary civil defence committees (PAC); the application of international humanitarian law; and the date of entry into force of the agreement on human rights. He added that, with a view to achieving an agreement between the parties, he had submitted a consensus proposal to them. The President of the Republic accepted this proposal on 11 May 1992.

25. In his turn, the Conciliator delivered to the Government on 15 May 1992 a document in which URNG submits a comprehensive set of proposals entitled "Guatemala, a just and democratic peace: content of the negotiations". In this document URNG states that it is necessary to sign a prior agreement concerning human rights which would cover: the reintegration of the people displaced by the conflict; the role of the armed forces in a democratic society and the strengthening of the civil authorities; equal rights for indigenous peoples; social conditions (education, health, food, housing) and economic matters (farm production, landholding, etc.); and constitutional reforms.

26. On 30 June 1992 the Government transmitted to the Conciliator its "Rep to URGN's comprehensive set of proposals". In this document the Government comments that "the quest for peace through political means, as provided for the historic Oslo Agreement, is an indication that the use of armed force i not a means of resolving problems or of attaining power. The use of armed force does not reflect the aspirations of the people of Guatemala and has n place in the new world order. There is no longer any justification for bearing arms on the pretext that there is no possibility of political participation on ideological grounds, or in the name of so-called causes necessitating armed uprising (should any remain), since such issues cannot resolved through violence, which simply impedes development and the enhancement of democracy". The President of the Republic also proposed tha the Government and URNG should declare themselves to be in permanent sessio until the negotiations are concluded. For his part, the head of the government delegation in the peace negotiations said that the Government "o accepts a commission on the past for reconciliation and peace which has no judicial standing but will prepare a historical account of the violations a bequest to future generations, without reopening the wounds of the past".

27. In May 1992, it was reported that the Government of Guatemala had made proposal regarding the participation of the United Nations in the peace negotiations. The URNG issued a Memorandum dated 23 May in which it critici the Government proposal. The Secretary-General proceeded to consult with th parties and the Conciliator, Monsignor Quezada, on the modalities for UN participation in the peace process. In June, as a result of these consultations, the Secretary General appointed Mr. Jean Arnault as Observer succeeding Mr. Francesc Vendrell.

28. The civilian sectors repeatedly asked to participate in the peace negotiations and delivered to the Conciliator on 13 May 1992 a "Consensus document on human rights". In a communiqué of 30 July 1992 entitled "Propo of the civilian sectors concerning their participation in the peace and negotiating process" the civilian sectors, acting jointly through the Coordinating Committee of Civilian Bodies (CIC) and the Civilian Coordinati Committee for Peace (COCIPAZ), sought to contribute to the search for solutions to the global problem, for "peace in our country is not just the absence of war" and therefore requires the participation and contribution o every sector in the country. The communiqué, signed by six institutions representing the churches, eight Mayan organizations, 22 non-governmental organizations, 34 trade union and people's organizations, and three human rights research institutions, proposes their direct participation in the negotiations, arguing that, although they are not a party to the negotiatio they ought to contribute to the search for solutions and take an active par in the discussion of the items of the general agenda, submitting specific proposals to each of the parties, preferably in the presence of the Conciliator, the United Nations Observer, and the National Reconciliation Commission.

29. The dialogue between the Government and URNG was resumed in Mexico City on 3 August 1992. At the conclusion of the meeting, on 7 August, a preliminary agreement was signed concerning the voluntary civil defence committees (better known as civilian self-defence patrols or PAC), the entry into force of which is dependent on the signature of a global human rights agreement. According to this preliminary agreement,

> 1. Both parties agree that the freedoms of association and movement are international human rights, recognized in the Constitution, which must exercised in accordance with the law and be kept fully in force in Guatemala;

2. It is for the Human Rights Procurator, in exercise of his powers, to verify whether members of these voluntary civil defence committees have been compelled to join against their will, and whether they have committed crimes or human rights violations;

3. The Human Rights Procurator shall immediately carry out any necessary investigation in response to complaints made to him. For this purpose, having first stated in public the need for these committees to be voluntary and to respect the law and human rights, he shall make enquiries among the people, ensuring that the wishes of the members of the committees are expressed freely and without any pressure. If he establishes that the voluntary nature of the committees or the law have not been respected, the Procurator shall take any decisions which he deems fit and shall institute the corresponding legal or administrative proceedings in order to secure punishment of the violations of human rights;

4. Following the signature of this agreement and pending the signature of the firm and lasting peace, the Government of the Republic shall unilaterally state that it will not encourage the organization or arming of new voluntary civil defence committees anywhere in the country when the situation does not justify such action. The people concerned shall apply to their local mayor, who shall at once convene a public meeting and call in the Human Rights Procurator to verify, by all the means available to him, both the voluntary nature of the committee and the decision of the people. For its part, URNG shall respect the unilateral declaration by the Government as a positive expression of its will to achieve peace and URNG shall facilitate the action proposed in the declaration;

5. The two parties agree that other matters relating to the voluntary civil defence committees shall be taken up later under other items of the general agenda;

6. The parties recognize the education and information activities of the Office of the Human Rights Procurator and request the inclusion in such activities of information about the content and scope of this agreement.

30. At the conclusion of a second meeting in Mexico, held from 22 to 24 August 1992, the negotiators had not succeeded in reaching agreement on three other points: the application of international humanitarian law; the membership of the commission on past violations of human rights; and the participation of the civilian sectors in the peace negotiations. Concerning humanitarian standards, both parties agreed on the need to end the suffering of the civilian population and respect the human rights of the wounded, prisoners and persons not involved in the fighting. But there was disagreement as to the form of the commitment, since the Government wants it to be unilateral, while the URNG Command demands that it should be bilateral, being binding on both parties and obliging them to respect and implement it. The Government fears that such an agreement on humanitarian law may amount to recognition of belligerent status for URNG.

31. The parties agreed on the need to establish a commission on the past but did not agree on its membership or the time when it would begin its work. The Government believes that it should begin to operate after the signature of the final peace agreement, so that the investigation of human rights violations will not destabilize and polarize society. In contrast, the URNG Command proposes that the Commission should begin its work immediately, thus strengthening the negotiation process.

32. The Government rejected any participation by the civilian sectors in the negotiation rounds, arguing that the Oslo Agreement (see above, para. 22) covered only the two parties to the conflict. However, URNG asserted that all the civilian sectors had a legitimate right to participate in the negotiation process.

33. The meeting adjourned on 24 August 1992 without reaching any further agreement, and in the next few days the parties issued press releases accusing each other of a lack of genuine political will to continue the peace negotiations. Since then the Conciliator, accompanied by the United Nations Observer, has reestablished the unilateral (shuttle) contacts with the parties, with a view to identifying consensus formulas which will make it possible to reopen the bilateral talks on the unresolved human rights matters.

34. In a newspaper article published in Prensa Libre of 15 November 1992, the Conciliator, Monseñor Quezada Toruño, gave a detailed account of the current situation of the negotiation because he felt that, notwithstanding the principle of confidentiality, the people of Guatemala were entitled to learn about the progress reached and the obstacles still to overcome. He wrote:

> "There are some points of agreement on commitments concerning constitutional rights and obligations which are therefore of immediate application regardless of the negotiations. They are the following: (1) the general commitment that human rights should be fully applied in our country; (2) the commitment to strengthen the arrangements for the protection of human rights (Judiciary, Office of the Public Prosecutor, and Human Rights Procurator); (3) the commitment to eliminate impunity and to take legal action to declare enforced disappearances and extrajudicial executions crimes against mankind; (4) the commitment to combat any activities of illegal security machinery or repression units; (5) the commitment to prevent military conscription being an occasion for violation of human rights, so that, as a civil right and obligation, it will be just and non-discriminatory; (6) the commitment to protect organizations or persons working to promote human rights; (7) the commitment to compensate and/or assist victims of violations by means of measures and programmes of a civil, social and economic nature, aimed primarily at those most in need; (8) the commitment to request the United Nations to provide a verification machinery.
>
> "In addition to these commitments, bilateral agreements between the parties have been reached on: (1) mechanisms to ensure that members of the voluntary civil defence committees (PAC) are volunteers and act in accordance with the law, with respect both to existing committees and to any new ones; (2) respect for the human rights of the wounded, prisoners and persons not involved in the fighting, and the commitment to end the suffering of the civilian population in the armed conflict (approved verbally); (3) the establishment of a Committee on the Past to record in

detail the main violations of human rights between the beginning of the armed conflict and the signature of the final peace agreement (some details of its membership still have to be agreed)".

C. Legislative and institutional initiatives

35. The Congress of the Republic approved the ratification of the International Covenant on Civil and Political Rights (Decree No. 9-92 of 19 February 1992). The instrument of accession was deposited on 5 May 1992, and the Covenant came into force for Guatemala from 5 August 1992. This thus satisfies one of the recommendations of the Expert, who sent individual letters of congratulation on 20 May 1992 to the Minister for Foreign Affairs and the Presidential Coordinating Commission for Executive Policy in Respect of Human Rights (COPREDEH). In these letters the Expert further requested the Government, inter alia, that it should also consider the possibility of acceding to the first Optional Protocol to the Covenant, which invests the Committee on Human Rights with competence to receive communications from individuals.

36. Congressional Decree No. 48-92 of 23 September 1992 approved the law against drug trafficking. This law seeks "to eradicate illegal drug trafficking and the laundering of money from such trafficking". Under the law, anyone who provides or facilitates means for illicit drug trafficking risks a penalty of 12 to 20 years of imprisonment and a fine of 50 thousand to 1 million quetzales. In addition, article 52 of the Decree provides that "if the crimes described in this law lead to the death of one or more persons, the penalty shall be death or 30 years of imprisonment, depending on the circumstances of the case...". Some observers pointed out that this provision might conflict with article 4, paragraph 2, of the American Convention on Human Rights (to which Guatemala is a party) which prohibits the extension of the application of the death penalty "to crimes to which it does not presently apply". The Decree also creates the Commission against Addiction and Illicit Drug Trafficking which "will study and determine national policies for the prevention and treatment of addiction and for the prevention of unlawful activities connected with drug trafficking " (art. 71).

37. On 23 September 1992 the Congress of the Republic also approved the new law on the Code of Criminal Procedure. The Expert welcomes this important advance in the fight against impunity within the framework of the administration of justice. Under the new Code, which will enter into force within a year, the Public Prosecutor will be responsible for supervision of the investigation of cases, and court hearings are stipulated as the basis for the judge's decision in criminal cases. In addition, the new Code introduces a series of new procedural guarantees and a special procedure in the case of disappearances when the recourse of habeas corpus has produced no positive result; in such cases, it will be possible to entrust the investigation to the Human Rights Procurator, to some other legally established body, or to the relatives of the victim.

38. If the new system is to function, the Congress will also have to approve the new organic law on the Office of the Public Prosecutor. To date, this bill is still pending in the legislature.

39. Attention must be drawn to the integrated plan for transformation of Guatemala's judicial system for the period 1992-1997, which Juan José Rodil Peralta, current President of the Judiciary, is trying to set in motion. In order to comply with the principles of accessibility, independence, justice and efficiency as means of securing the people's confidence in the justice system, the plan proposes legal, administrative and technical reforms, the provision of equipment and construction of premises, and technical assistance and vocational training. The President of the Judiciary also announced the appointment of 133 new justices of the peace.

40. It is widely known that the Guatemalan indigenous leader in exile, Rigoberta Menchú Tum, won the 1992 Nobel Peace Prize. Although official sources have said that the Government did not support her candidature, she was received by the President of the Republic on 19 October 1992. On that occasion, the President extended to her an invitation to join in the peace negotiations between the Government and URNG.

41. The Congressional Commission on Legislation and Constitutional Matters issued a favourable report enabling the plenary of the Congress to approve the law providing that antejuicios opened against public officials (including deputies to the Congress) should be conducted in public and not in strictest secrecy, as has been the case up till now. This initiative provided the basis for the Congress to be vigorously questioned for having dismissed the antejuicio concerning the deputy of the Union of the National Centre (UCN), Elder Vargas Estrada, whom the Public Prosecutor had accused of serious violations of the criminal law.

42. In July 1992 the University of San Carlos proposed the establishment of a national council for protection of human rights, on the basis of article 82 of its statute, which provides for the university's cooperation in "the study and solution of national problems". It suggests that this council should have 11 members and that its purposes should be the promotion of the design and development of State human rights policy through educational and preventive activities, and the involvement of institutions and sectors representative of civilian society in a process of discussion, study, promotion and practice of human rights.

43. Lastly, the Congress, on the Government's initiative, is considering approval of International Labour Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. This Convention is important because, in the absence of domestic legislation to give effect to the provisions of article 70 of the Constitution, its ratification will make it possible to begin the adaptation of the country's judicial and administrative practice and the formulation of projects to assist its indigenous inhabitants, defining the modalities of their consultation and participation. In addition, the Convention recognizes the separate identity of indigenous peoples, their right to determine the priorities of their own development, and the cultural and spiritual importance of their relationship with their land or territory. This proposal has given rise to controversy in the Congress, especially because of the rules concerning the land of indigenous peoples. In order to save the situation, it has been proposed that a clause should be inserted in the enabling law to the effect that none of the provisions of the Convention shall affect rights guaranteed in the Constitution.

D. The armed forces

44. The Expert wishes to emphasize once again, as he did in his previous reports, that the armed forces must not believe that their powers allow them to establish independently their general political orientation. It is a fundamental principle of a democratic State that the armed forces must remain loyally subordinate to the civilian authorities who have received a legitimate mandate from the people to govern the country (see in particular E/CN.4/1992/5, para. 40). In this connection, the Expert notes with satisfaction that the Minister of Defence, General Domingo García Samayoa, assured him in unequivocal terms that the armed forces have no intention to steer a separate course. The armed forces, he explained, fully respect the role of the President as their commander-in-chief, viewing their mandate as being confined to loyally implementing the policies determined by the competent political organs of the State.

45. The Expert sees this attitude of principle confirmed by the fact that the armed forces, under the authority of the Govenment, participate through high-ranking representatives in the peace negotiations with the URNG. As far as the Expert can assess the situation, to date they have done so in a constructive spirit, putting forward their specific viewpoints but not attempting to obstruct or derail the negotiating process.

46. Nevertheless, by its sheer size and on account of the role they have played in the recent history of Guatemala, the armed forces still occupy a pivotal position in the political architecture of Guatemala. Not infrequently, spokesmen of the armed forces or the Minister of Defence himself take a stand on issues which are not of a strictly military character and which therefore lie outside their field of competence, if one applies the normal standards of a civil society. Generally speaking, the armed forces seem to feel entitled to pronounce on any developments which may affect the current political situation of Guatemala as well as the future of the country. Through that practice alone, they have raised many concerns with regard to human rights.

47. The spokesman (vocero) of the armed forces, Julio Yon Rivera, publicly declared shortly before the Nobel Prize Committee took its decision on the award of the 1992 peace prize that the armed forces did not support the nomination of Rigoberta Menchú. It is not clear what justification the armed forces could have to comment in such an unfortunate manner on an event which concerned Guatemalan society as a whole.

48. The Minister of Defence announced in several public statements that he would initiate judicial actions against the American anthropologist Clyde C. Snow, as well as against several human rights organizations, on account of their allegations that the armed forces were responsible for the violent deaths of the individuals, whose bodies were recently discovered and exhumed in mass graves in Guatemala. Similar threats were later directed against the URNG, which itself had charged the armed forces with violations of the laws of Guatemala.

49. The Expert must strongly disagree with this approach to dealing with offences that have shocked and frightened the national community. Under a regime governed by the rule of law every citizen has the right, and even the duty, to articulate his or her personal views concerning the possible

perpetrators of a crime that has occurred and which needs to be investigated so that the appropriate penal sanctions may be imposed. Of course, it is legitimate to penalize the deliberate misleading of the competent authorities. On the other hand, to reject the assistance of citizens in ascertaining the relevant facts and even threatening them with penal prosecution totally inverts the order of things. It is incumbent on the Public Prosecutor's office to investigate all allegations of criminal offences brought to their knowledge, and the armed forces should open an inquiry whenever they have been charged with unlawful conduct, attempting to show that they are not involved in the occurrences giving rise to the allegations.

50. Similar objections must be raised concerning a statement by the Minister of Defence made during the first days of November 1992, in which he specifically referred to three Guatemalan citizens - Ronalth Ochaeta, Human Rights officer of the Archbishop's Office; Amílcar Méndez, leader of the human rights organization CERJ; Factor Méndez, director of the human rights organization CIEPRODH. All of them participated in a conference organized in Washington on the topic of torture in Guatemala. According to the Minister of Defence, mere participation in that conference constituted a deliberate attempt to destabilize Guatemala and thus amounted to assistance to the guerilla movement. The Expert emphasizes once again that, by virtue not only of the Guatemalan Constitution (art. 35), but also of the International Covenant on Civil and Political Rights (art. 19), every person is free to express his opinions. Mere participation in a conference dedicated to a theme which certainly is not the central theme of the Guatemala of today must not be considered an act of treason vis-à-vis the nation. Obviously, any false allegations should be criticized; basically, however, it should be assumed that persons holding a responsible position in human rights organizations give a true account of the prevailing situation, setting the record straight, if necessary, in relation to journalistic exaggeration of what is allegedly happening in Guatemala.

51. The problem of forced recruitment by the army is still acute in 1992. In his previous report (E/CN.4/1992/5, para. 44) the Expert drew attention to the arbitrary and discriminatory way in which the military authorities operate with respect to the drafting of young males old enough to serve in the armed forces. The abuses result from legal shortcomings, for although the Constitution provides for compulsory military service (art. 135, paras. (a) and (g)), the current draft system does not guarantee equality before the law. The Expert was informed orally that a new drafting system had been introduced, designed to secure minimum requirements of fairness and justice. According to those rules, every young male is formally summoned to appear before a commission, among whose members is the local mayor. In practice, however, full compliance with the new regime dos not seem to be secured. It has been brought to the attention of the Expert that the army has been using force to arrest young males in the street and draft them into compulsory military service, in some cases without observing the legal requirements concerning the age of the draftees. Complaints from various sources and the information media indicate that minors are removed to military barracks to perform military service in mass operations, without even being given the time to inform their families. Such practices are particularly repugnant to certain indigenous races. It must be pointed out that most of the persons suffering forced recruitment belong to indigenous peoples. A memorandum sent to the Expert in June 1992 by the people of Santa Cruz del Quiché states that the methods used by military officers in handling the draftees are "racist and inhuman".

52. The Human Rights Procurator stated in his report on the first half of 1992 that he had received a total of 267 complaints of forced recruitment. In that same period, 131 cases were resolved by means of specific action by the Procurator; a further 62 cases were resolved through his good offices; and the remaining 74 cases are still pending.

53. In November 1992, a new draft bill on military and social service (Ley del Servicio Militar y Social) was submitted to the National Congress. The draft abolishes the existing exemptions for university students and establishes that a Draft Panel (Junta de Reclutamiento) whose function it will be to see to it that the drafting process is conducted in full respect of the principle of equality. To that end, the future Draft Panel will include a delegate from the office of the Procurator of Human Rights.

54. During his presence in Guatemala, the Expert found once again ample confirmation of the largely non-voluntary character of the so-called Voluntary Civilian Self-Defence Committees, currently referred to as civilian self-defence patrols (patrullas de autodefensa civil, PAC). Whenever he asked members of such units in personal interviews whether they had joined of their own free will, he invariably received the answer that to some extent pressure had been exerted by the armed forces or the local military commissioner. Therefore, the conclusion can hardly be challenged that, as emphasized in the earlier reports of the Expert, the actual state of affairs is inconsistent with article 34 of the Constitution.

55. Reports about abuses committed by the civilian self-defence patrols in the rural areas abound. The fact that the patrols were created contrary to the letter and spirit of the Constitution has at the same time prevented any effective control of those paramilitary units. It is a matter of common knowledge that the armed forces arm the patrols and provide some elementary form of training. But the day-to-day activities of the patrols are not subject to permanent monitoring as to their conformity with the laws of Guatemala, in particular their repect for human rights and fundamental freedoms. Rather, the Expert has the impression that, more often than not, members of the patrols are taught to think of the political situation of Guatemala in a black or white fashion. Whoever does not wish to perform service as a member of the patrols is automatically considered a "subversive" and, hence, as an enemy of the community; frequently, such stigmatization leads to violent acts.

56. The Expert, therefore, sees no reason which would justify any departure from the position which he took in his earlier reports. He notes at the same time the provisional agreement reached in the negotiations between the Government and the URNG on the issue of the civilian self-defence patrols, hoping that this agreement will soon be implemented (see paras 22-35 above).

57. Given the highly controversial role which the armed forces played in the recent history of Guatemala, there exists an obvious need for them to obtain a higher degree of legitimacy within the society whose interests they are called upon to defend. To that end, it is not enough that the armed forces function in some way or another. In a democratic system, every public institution must be accountable to the people who alone can legitimize the exercise of power. In mandating the armed forces with the tasks described in article 244 of the Constitution, the people of Guatemala have given them a particularly precious

trust. However, there is a clearly perceivable lack of transparency and control. The Expert, deliberately confining his observations to the field of human rights, considers it an elementary requirement of public accountability that whenever a grave offence is plausibly attributed to a member of the armed forces, an investigation should be started and disciplinary measures should be taken against the persons involved, independently of the outcome of judicial proceedings. Additionally, the results of such investigation and subsequent disciplinary proceedings should be brought to the attention of the public. In practice, however, this is not the case. The case of Myrna Mack, described elsewhere in this report (see paras 172-178 below), would seem to indicate, on the contrary, that no attempt is being made by the armed forces to elucidate the facts in order to restore military honour. Another case which should be recalled in this connection is the case of María Tojín and her baby, both disappeared while in the hands of the army. Thus, the Expert is compelled to conclude that dark stains remain on any unit that is involved in such manoeuvres of not permitting the truth to be revealed. The Expert calls upon the armed forces to devise appropriate mechanisms permitting to clear its reputation in case individual members have committed offences against the honor of Guatemala, including the international law protecting human rights that Guatemala has suscribed to.

II. HUMAN RIGHTS IN THE FRAMEWORK OF THE ARMED CONFLICT

A. Abuses in the areas of conflict

58. Despite the peace negotiations now taking place, the internal armed conflict which has affected Guatemala for many years now is continuing. Because of the conflict, the armed forces are the only authority present in vast areas of the national territory, especially in the rural areas where military detachments have installed themselves, together with the military commissioners and the civilian self-defence patrols (PAC).

59. Several non-governmental organizations complained about the continuation throughout 1992 of air raids carried out by helicopters and AT-37B air force planes, and about the artillery bombardment of rural communities by the army. According to these allegations, the following rural villages have been targets of these military actions: 11 January 1992, the Cuarto Pueblo estate (Department of El Quiché); 12 February 1992, Colomba, Costa Cuca (Department of Quetzaltenango); 29 March 1992, the Pueblo Nuevo estate, Ixcán (Department of El Quiché); 31 March 1992, Chel and Amachel villages, Chajul (Department of El Quiché); 27 April 1992, Santo Tomás, Ixcán (Department of El Quiché); on 29 April 1992 the Cuarto Pueblo and Pueblo Nuevo estates were again attacked by heavy artillery (on this occasion the peasants collected the remains of 31 shells from their cultivated land and housing); on 16 and 17 May 1992 seven shells were fired at the Cuarto Pueblo estate mentioned above; on 18 May 1992 18 81mm mortars were counted by the people of Pueblo Nuevo, Ixcán (Department of El Quiché); on 25 May 1992 the San Juan Democracia estate (Department of El Quiché) came under artillery and aircraft fire, as did the town of Ixcán (Department of El Quiché) on 17 June 1992. In this last case the peasants recognized A-37B Pilatus air force planes and helicopter gunships and counted 30 bombs dropped on their crops. According to farmers in the area, the bombings on 16 and 17 July 1992 of the estates of Pueblo Nuevo, Cuarto Pueblo, Los Angeles and Mayalaán, municipality of Ixcán (Department of El Quiché) destroyed a large part of their maize fields and plantations of rice, beans and plantain, as well as an irrigation plant in the area. On 27 July and 6 August 1992, the armed forces also shelled and machine-gunned the rural communities of Cuarto Pueblo, Los Angeles and San Juan La Quince (Department of El Quiché) with A-37B aircraft, according to a complaint by the non-governmental organization the Guatemalan Widows' National Coordinating Committee (CONAVIGUA).

60. In press statements issued on 8 August 1992 the armed forces rejected the complaints about the bombardment on 16 and 17 July 1992 of the estates located at Ixcán (Department of El Quiché), asserting that their operations were not directed against the civilian population but that there had been clashes with guerrilla groups on those dates in the area in question.

61. The expert himself is not in a position to ascertain the veracity of the facts reported above. When he met with the Minister of Defence, the Minister assured him that the armed forces never attacked non-military targets. However, the many complaints, coming from a wide array of sources, cannot be brushed aside as simple propaganda on the part of opponents of the Government. The Expert must conclude, therefore, that the armed forces have not been able to devise a military strategy which, designed to fight the guerrilla forces effectively, would nonetheless leave unharmed the population caught in the cross-fire. The Expert strongly urges the armed forces to restrict their military action to military targets, no matter how difficult

this may prove, to comply with combat conditions where no clear-cut front line exists. Strict observance of the elementary rules of warfare, which require sparing the civilian population, is all the more necessary since a great number of the refugees about to return from Mexico are expected to be resettled in those areas of Ixcán affected by the armed conflict.

62. The Communities in Resistance (CPR) of Ixcán and La Sierra (some 24,000 strong) received a further visit from the Multipartite Commission consisting of representatives of the Episcopal Conference, human rights non-governmental organizations, the Assembly of Evangelical Churches, and the Human Rights Procurator. The Commission then met on 18 September 1992 with the Minister of Defence and assured him that this civilian population could not be regarded by the armed forces as guerrillas and that it should therefore receive the treatment accorded to the non-combatant civilian population. The Minister of Defence agreed in public to maintain a dialogue with the Multipartite Commission "in order to find a suitable solution for these people who are suffering a situation of violence which prevents them from living as Guatemalans deserve to live".

63. The Human Rights Office of the Archdiocese reported the murder of Lucas Pérez Tadeo, aged 35, a member of the Chuj race, whose body was found on 3 September 1992 showing marks of torture and of hanging by the neck. The victim had disappeared several days earlier after leaving a meeting of patrol members at the office of the mayor of Guaxacaná village, municipality of Nentón (Department of Huehuetenango). Local people maintain that the murder was committed by members of the army who, according to the victim's wife, confused him with a guerrilla fighter. Members of the army's office of civilian affairs subsequently offered money and food to the relatives of the murdered man. In addition, the military authorities had moved men from the detachment at Las Palmas and Catarina, located in the municipality of Nentón (Department of Huehuetenango). This incident occurred at the expected location of the imminent repatriation and resettlement of a large number of Guatemalan refugees from Mexico.

64. According to non-governmental organizations, on 14 September 1992 regular soldiers with blackened faces attacked the CPR of Santa Clara (Department of El Quiché), capturing two peasants, Jacinto Brito Raymundo, aged 21, and Jacinto Nox Guzman, aged 17, whom they threatened to kill, accusing them of belonging to the guerrilla forces. Before being set free, they were robbed of all their belongings.

65. Military accounts described the "death in clashes" during the night of 12 September 1992 of three presumed members of the Revolutionary Organization of the People in Arms (ORPA) at the Belford estate, Palín, (Department of Escuintla). The armed forces office of information and publicity stated that the presumed members of ORPA "were killed in an armed encounter at the estate following an intensive search after the men had tried to set up an attack post on the road". The photographs of the bodies of the victims, to which the Expert had access, show that they were killed with coups de grace.

66. On 20 May 1992 the Expert wrote a letter to the Chairman of the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH) in which, inter alia, he referred to the capture by the army, in combat, of Efraín Bámaca Velasques, "Comandante Everardo" of URNG. This occurred on 12 March 1992 in Montúfar village, municipality of Nuevo San Carlos (Department of Retalhuleu). According to URNG, "Comandante

Everardo" was captured wounded by government troops. At the same time the army reported that on the same date and in the same area a guerrilla who had been killed in combat was subsequently buried unidentified in the cemetery of Retalhuleu. In the light of this information the Expert, at the request of URNG, urged the authorities to respect the life and physical integrity of the captured comandante and "... to exhume and identify the corpse as part of an impartial judicial investigation and with the assistance of the Human Rights Procurator". This communication was also conveyed to the Minister for Foreign Affairs on 20 May 1922. However, to date the Expert has not received a precise answer from the authorities.

67. The activities of the military commissioners and the members of the civilian self-defence patrols (PAC) continue to cause feelings of insecurity and unease among the civilian population, especially in rural communities. For example, some 20,000 inhabitants of Santa Caterina Ixtahuacán, municipality of Sololá, engaged in a demonstration on 11 September 1992 demanding that the patrols in the area should be disarmed and disbanded. This initiative has been supported by the Mutual Support Group (GAM) of families of disappeared persons, which rejected the threats made against the civilian population by these groups and stated that the army was bringing pressure to bear on the leaders of the patrols to make the local people join them.

68. Many complaints are still being received about the pressure brought to bear by the leaders of these patrols, especially on indigenous minors and peasants, to make them join their ranks, pressure which often amounts to forced recruitment by means of threats and ill-treatment. Information provided by the Human Rights Office of the Archdiocese indicates that at the La Estrella estate (Department of El Quiché) children aged under 14 patrol from 06.00 to 16.00 hours every fortnight and occasionally take part in night patrols; these children do not attend school because their parents lack the resources. The compulsory patrols were ordered by the "lieutenant of El Quiché", who promised the PAC members that "the army would shortly provide them with Galil machine guns".

69. On 10 May 1992 the public relations office of the Office of the President of the Republic placed a paid notice in the Guatemalan daily press entitled "The United Nations recognizes and approves the role of the civil defence forces", referring to a resolution of the United Nations Commission on Human Rights but quoting only two of its preambular paragraphs. In these circumstances, the United Nations Centre for Human Rights published in the Guatemalan daily press on 16 May 1992 another paid notice expressing its "surprise and concern" at the government announcement. Subsequently the Centre published the full text of resolution 1992/57 of the Commission on Human Rights entitled "Civil defence forces" and also referred to Commission resolution 1992/78 entitled "Assistance to Guatemala in the field of human rights", paragraph 11 of which exhorts the Guatemalan authorities to pay attention to the recommendations made by the Expert," ... principally the abolition of the system for the protection of the citizenry and of the voluntary civil self-defence committees, within the context of the negotiations between the Government and the Unidad Revolucionaria Nacional Guatemalteca". Some days earlier, the Under-Secretary-General for Human Rights had sent a letter, dated 13 May 1992, to the Permanent Representative of Guatemala to the United Nations Office at Geneva expressing his concern about the Government's press notice. In this letter he referred to the forthcoming publication of the notice paid for by the Centre and expressed the hope that in future the sincere desire for cooperation between the Government and the Centre would not be disturbed by such incidents.

70. Several hundred residents of the communities of Santabal I, Chitucur, San Pablo, Primavera, Santabal II and Chuitzalic in the municipality of San Pedro Jocopilas (Department of El Quiché) sent a complaint on 7 October 1992 to the President of the Republic stating that "for more than 12 years we have been subjected to repression, murders, kidnappings, death threats, and we have been accused of membership of the guerrilla forces and of collaboration with the insurgents" and accusing the former local PAC commander-in-chief of "committing so many violations against us, widowing many of our women and compelling us to join civilian patrols". The collective complaint states that "two years ago the PAC leaders in each community elected a commander-in-chief who is behaving in the same way, searching our houses, especially the houses of those of us who are not members of civilian patrols, and accusing us of being guerrillas, threatening nearly all the people, sentencing to death those who do not join the civilian patrols, and also trying to kidnap them. He accuses us of the sabotage and attacks and erection of barricades done by the insurgents, but we are nothing more than poor peasants". The signatories also complain of having been compelled to join the patrols and pay for their anniversary celebrations.

71. The Catholic Church has reported that investigations in rural areas indicatethat it is common knowledge in certain departments such as El Quiché and Huehuetenango that the PAC leaders "receive instruction" in the military camp closest to where they live and that "practice firing" takes place. Local departmental branches of the Office of the Human Rights Procurator have established that the people are confused by "not knowing the difference between the duty to perform military service and their voluntary membership of PACs". The Episcopal Conference of Guatemala in its pastoral letter of 15 August 1992 entitled "Five hundred years spreading the Gospel" states that "we are not opposed to military service, although we believe it is not and should not be the only way of serving one's country. But at the same time we regard it as extremely dangerous to arm the civilian population and give them almost full powers without any other justification than support of the counter-insurgency struggle. The creation of a militaristic outlook leads culturally to scorn for human life, admiration of force, and use of violence to attain one's ends".

72. The Runujel Junam Ethnic Communities Council (CERJ) denounced the murder of Catarino Chanchavac Larios, aged 21, in the canton of San Pablo, municipality of San Pedro Jocopilas (Department of El Quiché) on 26 August 1992. The victim had refused to join the voluntary civil defence committees and was regularly threatened with death by the leaders and members of patrols in the canton of Santabal II and San Pablo. For its part, the National Council of Displaced Persons of Guatemala (CONDEG) announced that members of civilian patrols in the township of San Pedro Jocopilas imposed in October 1992 a virtual curfew from 18.00 hours until 06.00 hours on the population of that rural area. Those responsible for this measure have been identified by the community. According to CONDEG, this local state of emergency enables the PAC leaders to shoot people or detain them illegally. The same situation is said to exist in the canton of Chontalá, municipality of Chichicastenango (Department of El Quiché).

73. The Peasant Unity Committee (CUC) complained that from mid-August and during the first week of September 1992 the army had been training members of PACs in the Department of Huehuetenango, supplying them with ammunition ("30

rounds each and not just for practice") and organizing public meetings in the communities of Nentón, Jacaltenango, Santa Ana Huista, San Antonio Huista, La Democracia, San Pedro Necta, Santiago Chimaltenango, San Juan Atitlán and San Sebastián (all in the Department of Huehuetenango) to encourage the people to organize themselves in PACs. This complaint also emphasizes that the PAC leaders, together with the military commissioners, have forced the population to join their ranks, accusing those who resisted of being members of the guerrilla forces. For example, on 23 August 1992 the lieutenant commanding the military detachment in the village of Valparaíso-La Democracia came to the Santa Rosa estate to "compel the people to join the patrols, saying that if the Human Rights Procurator came to the village he should not be allowed to enter because he is a guerrilla and politicker". The CUC complaint adds that on 10 September 1992 an army patrol came to the village of Ical (Department of Huehuetenango), threatening all the members of the community and saying that they should either organize themselves again into civilian patrols, or take refuge in Mexico or go off with the guerrillas to the mountains.

74. According to Decree No. 19-86, the PACs operate under the command and coordination of the Ministry of Defence. This text regards them as "purely civilian organizations forming part of the territorial reserve available for mobilization".

75. URNH has also committed excesses in the internal armed conflict. It is accused of acts of aggression against the civilian population in rural areas, selective attacks on persons regarded by the guerrilla forces as members of the army or connected with some army institution, sabotage of the local infrastructure and public installations (roads, bridges, electricity pylons, etc.), theft of private property, and harassment designed to force more of the people to join its ranks.

76. The Government attributed to URNG several cases of kidnapping which resulted in the deaths of military commissioners and patrol members. For example: Manuel Pu Carrillo, a military commissioner in Santa María Chiquimula, was murdered on 14 January 1992; Regino Paniagua Yool, a military commissioner, and his brother Genaro, on 28 January 1992 in the village of Rancho Chiquito, municipality of Zaragoza (Chimaltenango); Antonio Ordóñez Chanchavac, on 16 January 1992 in Suchitepéquez; and Ramón Mendoza Mendoza, a patrol leader in the canton of Santabal II, municipality of San Pedro Jocopilas, in the night of 17 September 1992. This last case has been corroborated by the local office of the Human Rights Procurator in El Quiché.

77. The Government also accused URNG of the murder and serious wounding of civilians owing to the explosion of Claymore bombs and fragmentation grenades left abandoned. These devices exploded in fields, under bridges or on roads frequently used by the people. These circumstances caused the deaths of Irene Matías Morales and Sindy Recinos Mariana on 13 May 1992 in the village of Valparaíso, municipality of La Democracia (Department of Huehuetenango), and of Enrique Pelicó Herrera, aged 14, in the village of Playa Grande, municipality of Ixcán (Department of El Quiché). The following persons also suffered wounds: Manuel Caal, on 19 January 1992 in the village of Tres Islas, El Petén; Manuel Ché, a farmer aged 32; José Choc Caal, aged 10, in March 1992 in the village of Sayaxché, El Petén; Anacleto Pelicó Herrera, aged 19, in the village of Playa Grande (Department of El Quiché); the children Benedicto Ramos Gómez and his brother Emilio in May 1992 in the community of El Porvenir (Department of San Marcos); the children Sebastián Velasco Cobo and Sebastián

Cobo Gallego, aged 9 and 12, in May 1992 in Amachel (Department of El Quiché). In these latter cases, no specific dates or other details were supplied. Lastly, the Government stated that the Public Prosecutor had decided to take legal proceedings against a presumed guerrilla commander in respect of the death of the child Enrico Pelicó Herrera and the serious wounding of his brother Anacleto (mentioned above).

78. The Government also attributed to URNG the kidnapping on 14 January 1992 of Carmen Manzanares Ortíz, Toribio Gómez Hernández and Marcelino Dimas Monterroso, and the theft of property belonging to them from the village of Santo Tomás, municipality of Ixcán (Department of El Quiché). The merchant Domingo Ramírez Raymundo managed to escape on 18 February 1992 in el Pino, Chajul (Department of El Quiché), together with eight Ixil peasant families who were returning to their community and had been intercepted by a group of "guerrillas who demanded that they hand over their belongings".

79. In addition, the Government denounced URNG attacks on vehicles belonging to private individuals and to international humanitarian organizations operating in rural areas. One case occurred on 3 January 1992 in Nebaj (Department of El Quiché) when irregular forces set fire to a vehicle belonging to the UNDP project for displaced persons, refugees and returnees in Central America (PRODERE-Guatemala); other attacks occurred on 13 Janaury 1992, against a long- distance bus in the municipality of Libertad, El Petén; on 7 February 1992, on a vehicle belonging to the International Mission MI-1305, in which two foreign officials were travelling to Nebaj (Department of El Quiché); and on 14 May 1992, again on a PRODERE vehicle in the Department of El Quiché. In addition, URNG dynamited electricity pylons on 19 January 1992 in the village of El Aguacate (Department of Huehuetenango); on 18 June 1992 in Sololá and Panajachel; and on 30 June 1992 in Chimaltenango, Sololá and Quetzaltenango. Some of the telecommunications pylons of the Telecommunications Corporation of Guatemala (GUATEL) in the Department of El Petén were also blown up.

80. As to the forced recruitment of the civilian population by the guerrilla forces, sources in the Office of the Archdiocese and in several Guatemalan non- governmental organizations report that in some villages, in particular in the Department of El Quiché, the people are subjected to this practice. For example, the residents of Chel (Department of El Quiché) reported "a strong guerrilla presence around the Communities in Resistance, recruiting young males, including minors, and drafting them as combatants after having talked to them and persuaded them".

81. During his visit to Guatemala, the Expert had ample opportunity to talk to persons from all walks of life, from the highest officers of the State down to the common farm labourer. On many occasions, he asked his interlocutors whether they saw any justification for the ongoing armed conflict. Invariably, the answer was that there was just one desire, namely that peace should be brought about as soon as possible. In fact, the Expert considers that a serious process of negotiation has begun, the Government involving itself in that process with a sincere will to listen to the URNG and to accept balanced solutions to the issues on the agenda to be discussed by the two sides. Under the current circumstances the reasons which in the past may have justified resorting to armed force now appear in a new light. There exists a democratically elected Government. This Government seeks to uphold and strengthen the rule of law, although it is not fully successful in those

endeavours. Human lives should not be sacrificed in such a situation. To rely on the right to resist can only be a measure of last resort against an oppressive Government, when no other remedy is available. In addition, the effects of the material damage should not be underestimated. The blowing up of bridges and electric power lines harms the people of Guatemala as a whole. It is the ordinary citizen who suffers most. The Expert, who is committed to the ideal of human rights, cannot condone such activities.

B. Refugees, internally displaced persons and returnees

82. Since mid-1991 a dialogue has been developing in the country between the Government and the Guatemalan refugees in Mexico with a view to determining the modalities of their return. The negotiating bodies have been the Ad Hoc Committee for Aid to Returnees (CEAR), established by the Government in 1986 and reorganized under Government Decision 68/91 of 4 February 1991 as a unit in the Office of the President of the Republic headed by the Vice-President of the Republic, and, for the refugees, the Standing Committees of Representatives of Guatemalan Refugees in Mexico (CCPP).

83. According to figures supplied by UNHCR, 8,408 Guatemalan refugees returned voluntarily between 1987 and 1992. CEAR has provided them with food, minimum shelter, transport, farm inputs, travel assistance and identification papers. Also according to UNHCR, there are still some 45,000 Guatemalan refugees in Mexico (23,000 in Chiapas, distributed among 124 camps; 11,500 in Campeche; and 8,500 in Quintana Roo; there are also 2,000 dispersed refugees in Chiapas).

84. On 27 February 1992 the CCPPs, the Mediating Agency, CEAR and the National Fund for Peace (FONAPAZ), in the presence of the Mexican Commission for Assistance to Refugees (COMAR), agreed on the establishment of the International Returnees Support Group (GRICAR) consisting of representatives of the embassies of Sweden, Canada, Mexico and France in Guatemala and of two non governmental organizations of the International Council of Voluntary Agencies (ICVA). The objective of GRICAR is to facilitate the dialogue and the return of the refugees, to monitor the agreements and commitments entered into by the parties, and to escort and aid the refugees during their return and resettlement. A coordinating committee of governmental bodies and cooperatives for the assistance of people harmed by the internal armed conflict was also set up; it includes more than 20 non-governmental organizations and ten cooperatives, which coordinate strategies from the standpoint of non- governmental organizations.

85. In 1991 the Standing Committees (CCPPs) submitted a paper to the National Reconciliation Commission setting out six points concerning their return. At a meeting from 16 to 18 March 1992 the CCPPs and the Government agreed on two of the refugees' six demands: voluntary, collective and organised return and the freedom of organization and association for the returnees.

86. On 23 June 1992 the project entitled "Labour Reintegration Fund" (FORELAP) was established; this is an agreement on financial support for reintegration in the labour market and in productive work concluded between FONAPAZ, CEAR and the International Organization for Migration (IOM) which is designed to provide the returnees with the funds to take advantage of a new method of land purchase and to establish small farm and handicrafts production enterprises. Initially, CEAR was allocated 2 million quetzales, which were to

be administered by IOM. Attention should also be drawn to the interinstitutional cooperation agreement between CEAR and the National Agricultural Processing Institute (INTA), which are both government institutions. A FONAPAZ support fund was also established for CEAR to enable it to deal with such problems as mobilization, transfers, transport and humanitarian assistance in the areas of conflict in the departments of Huehuetenango, El Quiché and Alta Verapaz and to strengthen its own institutional structure. The initial amount furnished by FONAPAZ to CEAR was 500,000 quetzales.

87. The Episcopal Conference of Guatemala (CEG) stated in a pastoral letter issued on 1 July 1992 that "the minimum conditions do not exist for the return of the refugees and that the causes which have generated so much violence and suffering persist in the country". According to CEG, this situation manifested itself in political and common crime, extreme poverty, the continuation of the armed struggle, terrorism and drug trafficking.

88. On 13 and 14 July 1992, the CCPP and CEAR delegations met in Guatemala City and began negotiating on the basis of the refugees' six demands. They concluded by establishing a technical committee of the Mediating Agency to prepare a proposal in the form of a working paper for submission to the parties for consideration before the next negotiating meeting.

89. On 7 August 1992, the Institute for the Advancement of the Social Sciences of Guatemala (AVANCSO) made public its research into the reintegration processes in communities of returnees entitled "Where is the Future?" (research paper No. 8); this work had been initiated by the anthropologist Myrna Mack before her murder on 11 September 1990. It studies four cases of return: Ixcán (northern El Quiché) and Nentón (north-eastern Huehuetenango) for repatriated refugees; and Triángulo Ixil (north-eastern El Quiché) and Cobán (eastern Alta Verapaz) for internally displaced persons.

90. On 23 September 1992, the CCPPs and CEAR signed an agreement on the six points relating to the return of the refugees. The first point states that the return "must be a voluntary decision, individually expressed, carried out in a collective and organized manner in conditions of security and dignity"; UNHCR is to verify the decision of refugees wishing to return. In addition, the "collective and organized return", according to a plan prepared by the CCPPs themselves, would be "gradual, in the short term, programmed and organized by the Standing Committees...". The second point deals with "according the returnees the freedom of association and organization"; it is emphasized that they are not "obliged to form associations or join self-defence or similar groups or associations"; the refugees are given a period of three years in which they can devote themselves exclusively to the inherent activities of "resettlement, reconstruction and reintegration", and they are excused from military service during this period. The Verification Agency or an ad hoc committee will determine at the end of the period whether the reintegration has been effective; if not, it may request the authorities to extend the period of exemption from military service.

91. The third point is the "escorting of the returnees"; this means "the physical presence of the Human Rights Procurator, the Church, UNHCR and GRICAR" and of organizations and individuals "in the phases of transfer, resettlement and reintegration of the returnees". The fourth point accords "freedom of movement within the country and the right of exit and entry for

the returnees and members of the Standing Committees"; the Government also undertakes to transmit full documentation on the returnees to the civil registry authorities. The fifth point concerns the "right to life and personal and community integrity" of the returnees, which the Government undertakes to respect strictly, as well as prohibiting discrimination, on the ground of having been a refugee, in the exercise of social, civil, political, cultural and economic rights.

92. Lastly, the sixth point deals with the returnees' "access to the land", concerning which several proposals are made:

(a) Returnees with a title deed: they will return to their land. But if this land is occupied by persons without title, the Government shall negotiate with the occupants for 30 days; after this period, the returning owners may take appropriate legal action (prohibition of spoliation) or renounce their title, in which case FONAPAZ or FONATIERRA will provide them with funding for other land;

(b) Returnees with other notarized documents: CEAR shall investigate the registration of the land; if the land is occupied, the Government shall negotiate with the occupants for 30 days; after this period, the refugees may take legal action in the courts or renounce their title in favour of the nation and obtain land with funding by FONAPAZ and FONATIERRA;

(c) Landless returnees of the age of majority: FONAPAZ will provide them with soft loans for the direct purchase of land or of available public or private land acquired by the Government through FONATIERRA;

(d) Returnees members of cooperatives: they will be helped to rejoin their cooperatives; if the land of the returning member of the cooperative is occupied, the Government shall try to recover it or shall help with the purchase of new land for the cooperative or for the returnee;

(e) Returnees who had owned municipal land: CEAR shall try to recover this land or, if that is not possible, shall help with the purchase of new land for the returnees.

93. On 8 October 1992, CEAR and the CCPPs signed a Final Agreement in the presence of the Mediating Agency and members of GRICAR. This Final Agreement consists of the six points described above and a seventh point dealing with "mediation, monitoring and verification". Where mediation and monitoring are concerned, the Government and the Standing Committees "state their willingness to keep the dialogue open", in order to solve any problems which may arise during the process of return. In addition, the Mediating Agency shall continue its mediation, advisory and monitoring work, facilitating the dialogue between the parties and managing the implementation of the agreements. It shall also verify that UNHCR and CEAR are providing the support, advisory and logistic services required at the various stages of the return.

94. "Verification" means "determination of the partial and/or total implementation of these Agreements". The Verification Agency which is being established will consist of the Human Rights Procurator, a representative of

the Episcopal Conference of Guatemala and "a representative of the United Nations authorized to issue periodic and annual reports or, with the same powers, the independent Expert of the United Nations on Human Rights, Professor C. Tomuschat, or a person designated by him to perform these functions". The parties welcomed the intention of the Expert, conveyed to them on 6 October 1992, "to monitor carefully and in person, or through his representative, the process of return and reintegration under the mandate given by the United Nations Commission on Human Rights, including in his reports to the Commission specific chapters on the return". The functions of the Verification Agency will be to ensure respect for the "civilian status of the returnees", satisfactory implementation of the signed agreements, consultation with the members of GRICAR, and the submission of public reports at such intervals as it sees fit.

95. Although this Agreement is seen to be positive, the CCPPs stated that two points regarded as essential by the refugees were not taken into account: the disbanding of the civilian self-defence patrols and the removal of the military detachments from the areas close to their resettlement sites. In this connection, the Catholic Church emphasized that the minimum conditions for the return did not exist as long as the internal armed conflict and the causes which prompted people to flee to Mexico persisted. According to information received in October 1992, the armed conflict has intensified in northern Huehuetenango (repatriation area), and the PACs have been reorganized, increasing the pressure on people to flee to Mexico, as in the case of the residents of Guaxacaná village, municipality of Nentón (Department of Huehuetenango). In northern El Quiché the army has established a detachment in a repatriation area - Santa Clara village, Ixcán. In the case of El Petén, the army has deployed 11 detachments in the municipality of La Libertad alone (another repatriation area).

96. In subsequent talks the Standing Committees and CEAR set 13 January 1993 as the date for the first collective return of refugees. The first big group will consist of 828 families (3,948 persons) from 50 camps in Chiapas, four in Campeche and four in Quintana Roo (Mexico). Of these 828 families, 592 have chosen as their place of return "Polígono 14" in Ixcán (Department of El Quiché), while the other 236 families prefer the municipality of Nentón (Department of Huehuetenango).

97. During his fifth visit to Guatemala the Expert paid special attention to the situation of the refugees who have already returned voluntarily (some 8,408 persons in the last six years, according to UNHCR). For example, on 3 and 4 October 1992 he travelled to several places in the departments of Huehuetenango and Alta Verapaz in order to interview groups of returnees personally. In Huehuetenango, accompanied by the Human Rights Procurator, the Expert visited the town of Barillas, where he was greeted by a large demonstration by people who had already congregated in the square. He listened to several statements by representatives of the civilian self-defence patrols, who defended the need to continue patrolling. In addition, the demonstrators were carrying placards with slogans supporting peace, the army and the patrols. However, the elected mayor, Francisco Andrés, was present but was not invited to speak by the organizers of the demonstration.

98. When the demonstration was over, the Expert withdrew to the UNHCR offices in Barillas, where he took direct depositions both from the elected mayor, Francisco Andrés, and from the parish priest of the Catholic Church, Silverio

Chung. They both stated that the civilian population of the town was controlled by the local military detachment, which organized the peasants into civilian self-defence patrols (5,000 persons). In their opinion, the soldiers and the PAC leaders pressured the peasants, especially the humblest ones, into joining the patrols. Minors were recruited by force by means of raids. In their view, the continuation of the patrols was not justified from the military standpoint, since there had been no clashes between the army and the guerrilla forces in their township, although sporadic clashes continued outside the urban areas, in the mountains. Furthermore, they stated that the military authorities interfered constantly in civil matters falling within the competence of the municipality and the mayor. As for the persons who had fled to Mexico and had recently returned, the witnesses stated that they were frequently labelled "subversives", which made it difficult for them to reintegrate themselves in society and jeopardized their personal safety. In particular, the commanders of the military detachments and the civilian self-defence patrols ought to support without question the activities of the mayor and the civil authorities designed to create more favourable conditions for the return and reintegration of the refugees.

99. On the same date the Expert visited the village of Ojo de Agua in the municipality of Nentón (Department of Huehuetenango), where he met with representatives of the 33 families (about 150 persons) who lived there and had returned from exile a few years earlier. Their living conditions were typical for indigenous peasants in Guatemala, i.e. poverty. They stated that all the members of the PACs patrolled voluntarily "on the orders of the military detachment", although they thought that the patrols were no longer needed since there were no clashes between the army and the guerrillas in the vicinity of their town.

100. On 4 October 1992, accompanied by the Human Rights Procurator and the Director of PRODERE in Guatemala, the Expert visited the town of Yalpemech in the Department of Alta Verapaz, where a group of 66 families had settled on their return from exile in Honduras in 1991 and 1992. Since that time they have been trying to organize themselves in this resettlement area with the aid of UNHCR, CEAR and non-governmental organizations. They said that they did not have sufficient land to work and that their settlement was isolated since there was no access by road. Although on 2 June 1992 a guerrilla band had appeared in the village for propaganda purposes, prompting the arrival of the army a few days later and a clash with presumed guerrillas on 13 June 1992, the Yalpemech returnee community did not believe that they were directly involved or that their members were obliged to patrol. However, they indicated a number of difficulties with personal documents which still affected 12 persons, as well as the usual problems of poverty: defective sanitation, lack of a doctor or nurse, shortage of medicines, health problems such as endemic malaria, shortage of drinking water, and failure of the Ministry of Education to appoint promised teachers. Not all of the children attended school, and they suffered from malnutrition and chronic diseases, including malaria and intestinal parasites.

101. The Expert also gave his attention to the sitation of the 23,000 Guatemalan refugees living in some 124 camps close to the frontier in the State of Chiapas, Mexico, most of them difficult of access. Specifically, accompanied by the deputy representative of UNHCR in Mexico, he visited the Gracias a Dios and Nueva Libertad camps, noting the living conditions of the refugees, which were close to poverty, and their desire to return to their

country of origin. Despite the aid and protection which they received from the international community through UNHCR and the Mexican Commission for Assistance to Refugees (COMAR), the refugees often lacked land to cultivate, could not perform the usual work done by Mexicans, except as farm labourers, and could not move about freely outside their camps owing to administrative restrictions imposed by the Mexican authorities. The body of refugees living in these conditions in the State of Chiapas numbers 23,000 recognized as refugees by UNHCR, with a further 9,000 persons who are organized into the Guatemalan Association of Dispersed Refugees (ARDIGUA); they are refugees not recognized as such, and most of them work as labourers on Mexican land for wages of 7,000 Mexican pesos a day. At least two thirds of the dispersed refugees have stated their wish to return to Guatemala.

102. Another persistent problem is that of the people displaced within the country as a result of the internal armed conflict. The Expert devoted considerable space in his last report to a body of these people which refused to become involved in the armed struggle, withdrew to the mountains and organized itself into what are known as the Communities in Resistance (CPR), which are to be found mainly in the Departments of El Quiché and El Petén. In El Quiché alone there could be 20,000 such persons (E/CN.4/1992/5, para. 52). These communities are calling upon the Government to recognize them as non-combatant civilian settlements and they denounce the harassment to which they are being subjected and the enforced isolation in which the army has been keeping them. In this connection, it will be recalled that on 10 October 1991 the Expert visited the villages of Amachel and Cabá in the municipality of Chajul (Department of El Quiché). In February 1992 he again visited Cabá, and also Santa Clara, in the same municipality and department. He described his first visit at length in his previous report (E/CN.4/1992/5, paras. 54-62). It should also be remembered that on 8 November 1991 the Expert sent a letter to the President of the Republic describing the problems of the CPRs in the Department of El Quiché, emphasizing their deplorable living conditions, their isolation and the lack of health and education services. According to that letter, they were forced "to be completely self-sufficient since they cannot sell their produce in outside markets, nor can they buy such basic items as footwear, clothing and medicine" (E/CN.4/1992/5, para. 63). In these circumstances, the Expert recommended that the initiative of the International Committee of the Red Cross (ICRC) in conducting a vaccination campaign among the children of these communities should be supported. He also recommended that "the army should stop treating the CPRs as a kind of civilian arm of the guerrillas, and the CPRs for their part should try to understand that the State is not a repressive machine" (ibid).

103. Subsequently, the Expert was informed about the difficulties in carrying out the vaccination campaign in these communities since the CPRs objected to the presence of a technician from the Ministry of Health in the ICRC team. In this connection, in a letter dated 20 May 1992 addressed to the Chairman of the Presidential Coordinating Commission for Executive Policy in Respect of Human Rights (COPREDEH), the Expert urged him "to continue his efforts to ensure that the vaccination campaign, which is as urgent as it is necessary, is carried out, even without the government health worker". In this connection, the Expert reiterated to the authorities his concern that "the Government has not provided the vital necessities for these people, who have suffered severe isolation under a policy of counter-insurgency".

104. During his fifth visit to Guatemala, on 30 September 1992 in Guatemala City the Expert received a delegation of six representatives of the CPRs of La Sierra and El Ixcán. They complained that their communities of Los Angeles and Cuarto Pueblo, in El Ixcán, had been bombed by the air force from 24 to 27 July 1992 and that houses and crops had been destroyed. Subsequently, on 8 August 1992, a further bombing attack resulted in the death of one of the settlers, Domingo Pascual Juan, and the wounding of the young Antonio Esteban Nicolás. They also referred to the living conditions and the insecurity in their communities, expressing the wish that both the army and URNG should withdraw from the areas close to their communities, so that they could enjoy greater security and freedom of movement, rights accorded to them by their non-combatant civilian status. On the unresolved issue of the vaccination of the children in the communities, they said that they wished to reach an agreement with the ICRC representatives and that they wanted one of their number to accompany the humanitarian team carrying out the vaccination campaign, in order to facilitate proper coordination with the representatives of the CPRs.

105. On 4 October 1992, the Expert also visited the community of Vatzuchil, in the municipality of Nebaj (Department of El Quiché), where he met with members of that community and of the communities of Salvá La Laguna and Tzijulché, in the same municipality. The residents are indigenous people displaced by the civil war in earlier years who have received assistance under the UNDP project for displaced persons, refugees and returnees in Central America (PRODERE). These settlers said that they lived in fear because the military leaders in the area threatened them for being subversives and told them that the members of PRODERE and the Office of the Human Rights Procurator were "communists". In the last two villages mentioned above, the army compels the settlers to join the civilian self-defence patrols.

III. CIVIL AND POLITICAL RIGHTS

A. Right to life, physical integrity and security of person

1. Extrajudicial executions

106. Violence continues to be one of the salient features of the Guatemalan society. Almost every day, violent deaths are reported. It is, however, extremely difficult to shed clear light on the background of most crimes. Sometimes, there is strong evidence that a case can be characterized as an extrajudicial execution. In a number of instances, prior death threats received by the victims permit fairly clear conclusions to be drawn. Thus, the assassination of leaders and members of human rights organizations can hardly be ascribed to common crime. In other cases, the perpetrators were seen by witnesses. Normally, however, several explanations remain possible, and rarely does the judicial machinery succeed in elucidating the facts and punishing the culprits.

107. This situation is highly alarming. In the countryside, in particular, individuals do not, and cannot, have the feeling that their lives are sufficiently protected as required by the Political Constitution of Guatemala (art. 3), as well as by the International Covenant on Civil and Political Rights (art. 6). Every effort should be made to reduce the general climate of violence, since it is the supreme duty of the State, its raison d'être proper, to safeguard the fundamental rights of its citizens.

108. The fact that the system of criminal prosecution is highly ineffective in investigating criminal offences and identifying the perpetrators of such acts explains why the number of extrajudicial executions may vary greatly according to the sources of the data.

109. According to the Human Rights Commission of Guatemala (CDHG), a private body with headquarters in Mexico, a total of 342 persons were executed between 1 January and 13 July 1992; there were 314 individual executions, of which 56 bodies bore marks of torture, and seven collective killings involving 28 victims, of which eight also bore marks of torture. This figure is higher than the one produced by the Centre for Human Rights Research, Study and Promotion (CIEPRODH), which counted 186 cases of extrajudicial execution in the same period; of these, 22 persons had been tortured before execution. The Human Rights Office of the Archdiocese of Guatemala reported 399 extrajudicial executions and murders in the first half of 1992 (as against 382 cases in the same period of 1991); lastly, the Office of the Human Rights Procurator recorded 253 reports of alleged extrajudicial killings between 1 January and 30 June 1992, of which four were rejected, 40 have been confirmed as such, and 29 are being investigated to determine their classification. Of the 40 cases classified as extrajudicial executions by the Human Rights Procurator, 28 were attributed to the State and 12 to guerrilla groups.

110. The various non-governmental organizations all report that the first half of 1992 saw a resurgence of extrajudicial killings and that the situation was particularly acute in May and June 1992. According to CDHG and CIEPRODH, the victims were generally poor peasants, most of them indigenous, subjected to persistent and indiscriminate violence. On the other hand, the Human Rights Procurator, who has the best instruments of investigation at his disposal, indicates a significant decrease in the number of political killings in comparison with the numbers of the previous year, 1991.

111. In a number of cases, it is highly plausible that the victims were killed by members of civilian self-defence patrols. To illustrate that sad reality, the following names may be given: Pedro Raguez, aged 22, murdered on 22 April 1992 in the canton of Xoljuyú, San Pedro de Jocopilas (Department of El Quiché); his body bore the mark of a coup de grace and his relatives believe that the perpetrators were PAC members, for the victim had had to leave the canton owing to the death threats made against him for refusing to take part in the patrols. Catarino Chanchavac Larios, aged 21, in the canton of San Pablo, San Pedro Tocopilas, (Department of El Quiché), stabbed to death on 26 August 1992; he had also resisted joining the PACs and had received death threats from the military leaders and patrol members in the canton of Santabal II and San Pedro, according to his relatives. Miguel Manuel Felipe Pablo, aged 67, María Isabel Francisco Gómez, aged 55, and Manuel Miguel Felipe Francisco, aged 28, were murdered by members of the civilian self- defence patrols on 1 October 1992 in San Rafael La Independencia (Department of Huehuetenango); four relatives of these persons suffered bodily harm from violent beatings by the same patrols.

112. The university sector has continued to be subjected to repression by armed groups in 1922. Several professors and students - in particular at the University of San Carlos (USAC) in the capital - suffered extrajudicial execution. For example, Luis Solares Argueta, a USAC student, in a street in the capital on 13 February 1992; his head bore the mark of a coup de grace. Manuel Estuardo Peña, a USAC professor of history and collaborator with several non-governmental organizations, was killed in the capital on 10 February 1992 when a bomb exploded in the university itself; Danilo Porras Colorado, aged 36, a student in the USAC law faculty and administrative secretary of the Department of Human Resources Training in the Ministry of Agriculture, was shot dead in Zone 13 of Guatemala City on 4 May 1992. Andrés Ramírez Lara, a USAC professor of economics was violently murdered on 15 May 1992. Francisco de Jesús Silís Martínez, aged 44, a teacher, was shot dead on 28 May 1992 as he left his school in the village of Agua Caliente in Chiquimula, municipality of Quetzaltepeque. Oscar Enrique Ponce Flores, aged 34, secretary of the USAC veterinary and zootechnology faculty, was shot dead on 31 May 1992. Raúl Morales Toledo, a USAC professor, was shot dead on 9 June 1992. Norman Rottnery Rodríguez Valdizau, aged 26, an engineer, Emilio Gonzalez Guerra, aged 26, and Luis Morales Zabala, aged 25, USAC students, were shot dead in a vehicle belonging to Rodríguez in a street in the capital on 5 July 1992 by unknown persons who fired on them from an army armoured vehicle in the presence of witnesses.

113. On 10 April 1992, the Human Rights Procurator reported an attack on USAC students as they were preparing for a traditional procession known as "La Huelga de Dolores". On this occasion there was a confrontation between the students and a patrol of the Hunapú combined force consisting of officers of the National Police, members of the Military Police Flying Squad, and officers of the Treasury Police, in which the student Julio Rigobereto Cu Quim was killed and a further seven students suffered bullet wounds. Members of the Consultative Council of the Association of University Students blamed the security forces. The Human Rights Procurator went to the spot and recorded details of the complaints. In his written opinion, in fact, he indicated that the State security forces were responsible and demanded that the perpetrators should be brought before the competent organs. The Government ordered that the members of Hunapú who had participated in the incidents should be brought before the courts; eight military policemen were tried by a military court,

and 12 national policemen and eight members of the Treasury Police were tried in the criminal courts. The commander of the Hunapú force, while deploring the loss of human life, explained that the police forces, finding themselves suddenly had been surrounded by the students and feeling threatened by them,had panicked. It is to be hoped that the forthcoming judgment will establish the truth of the case.

114. Priests and members of religious faiths also continue to be subjected to extrajudicial execution. For example, Enrique Adolfo Piril Paniagua, aged 19, a catechizer and leader of the movement Religious Youth of Guatemala, was shot dead in Guatemala City on 6 February 1992. The Franciscan priest Julio Medrano Díaz, aged 27, was shot dead on 15 February 1992 in the parish of San Idelfonso, municipality of Ipala, (Department of Chiquimula).

115. There were also reports of the execution of defenders of human rights such as the bank trade unionist Roberto Morales Alegría, whose corpse was found on 26 May 1992 in the Department of Escuintla bearing marks of torture and of a coup de grace in the head. Mario Antonio Díaz, leader of the National Council of Displaced Persons (CONDEG) was murdered in Criqué Grande, Izabal, in February 1992. Arturo García Moscoso and Julio Ernesto Barrios Pérez were murdered on 27 March 1992; both bodies bore marks of torture; Carlos García Mayorga was murdered on 29 June 1992 in Zone 11 of Guatemala City; he was a health worker who was employed in a project of a non-governmental organization with its headquarters in the United States. Benjamín Guzmán Hernández, a bodyguard of the deputy Human Rights Procurator, died in an attack on 31 October 1992 in Zone 1 of Guatemala City; José Rubén Pineda Castillo and Romeo Roderico Alvarez Argueta, also bodyguards of the Human Rights Procurator, were wounded in the same attack.

116. Members of certain political parties or their relatives were also executed. For example, Hector Luna Trócoli, a deputy to the Congress of the Republic, was shot dead on 23 January 1992 at his home in Villa Guadalupe, Guatemala City. Carlos Humberto Berganza Garza, aged 22, the brother of Fredy Berganza, the congressman of the Union of the National Centre (UCN), was machine-gunned on 8 September 1992 by a group of unidentified men when he was travelling from Ipala to Chiquimula.

117. It must be emphasized that virtually all these extrajudicial executions, as well as a large number of the violent deaths which continue to occur in the country, are the result of the improper use of firearms. In fact, many observers agree that in Guatemala people have an excessive number of firearms, available to anyone, and that they are used far too often, even to settle some minor dispute. In this connection, there must be a review of the legislation and administrative practice concerning the ownership and bearing of firearms and their control. It has been explained to the Expert on several occasions that these matters fall exclusively under military control. It would therefore be appropriate for this control to be transferred to the civilian police, which should begin a disarmament campaign among the people of Guatemala.

2. Enforced disappearances

118. The practice of enforced or involuntary disappearance persists in Guatemala and is used against peasants, members of universities or religious faiths, politicians and trade unionists and members of human rights

organizations. This creates a situation of insecurity which has been described in the report of the Human Rights Procurator on the "First Constitutional Period 1987-1992" in the following words: "Unfortunately, the security which all Guatemalans ought to enjoy is something contained only in the laws and is no more than a dead letter, for insecurity lies just beneath the surface of everybody's daily life, and criminals continue to act with impunity".

119. The report of the Working Group on Enforced or Involuntary Disappearances of the United Nations Commission on Human Rights (E/CN.4/1992/18, paras. 148-165) records a total of 2,994 cases of disappearance reported to the Government in the past 11 years which are still awaiting clarification; 30 of them occurred in 1991. This report states that the judicial bodies have failed to investigate such incidents, rendering remedies such as habeas corpus ineffective. The characteristic features of enforced disappearance remain the same: it begins with the abduction of the victim by unidentified armed persons who frequently use vehicles of military appearance (or private vehicles without registration plates) with darkened windows. These persons usually operate openly in daytime and at night, in public places or in private property or houses. The victim is manhandled into the vehicle and driven off to an unknown destination. In most cases, no trace of the victim is even found again. Sometimes, the body is retrieved a few days later so that the crime is reclassified from disappearance to extrajudicial execution or killing at the hands of common criminals.

120. Although it is difficult legally to prove who is responsible for such offences, the people and human rights organizations believe that these "heavily armed men" operate like professionals, on prior and express orders, and are certain of their impunity, so that it is assumed that they must be members of the security apparatus or enjoy its protection. According to the Guatemalan Commission on Human Rights, the Human Rights Office of the Archdiocese of Guatemala and various peasant, trade union and student organizations, as well as international human rights organizations, in many cases the relatives of the victim or other witnesses are directly acquainted with the perpetrators of these offences or can identify them as members of the National Police, the army or the civilian self-defence patrols. Evidence has also been received of cases in which, even when police officers do not participate directly in the incidents, they take no proper action to prevent them.

121. The Expert does not exclude the hypothesis that in some instances private gangs use disappearances to further unlawful objectives. For instance, it is striking that, as described below (para ...), many minors have disappeared. Political motives do not explain such offences against persons who, because of their age, have not yet attained a specific profile in public life. In other cases, where trade union members and leaders of human rights organizations were the victims of disappearances, it is natural to assume that those responsible felt their interests to be affected by the (peaceful) activities of the disappeared persons. This situation breeds anxiety and fear. The Expert has not learned of any successful investigation of cases of disappearances that would have allowed the perpetrators to be identified and put on trial. The fight against such criminal acts must be intensified in order to pierce the wall of depression which still holds the country in its grip. Unfortunately, the suspicion persists that disappearances and the services of criminals committing such acts are used for political purposes.

122. The number of victims of enforced disappearance varies according to the source of information. The Guatemalan Human Rights Procurator, in his report on the situation in the first half of 1992, records for this period a total of 65 official cases of enforced disappearance; of these 65 cases, 14 persons reappeared alive and three were found dead; a further nine cases have been definitely classified as enforced disappearances, and 39 reports are being investigated. The Procurator also refers to 52 other reports of missing persons, i.e. persons who have disappeared voluntarily, for personal reasons; 16 of these persons reappeared alive, two were found dead and 34 are still missing. These figures are slightly lower than those of the corresponding period of 1991. The Commission on Human Rights of Guatemala (CDHG) recorded 208 cases of disappearance between 1 January and 13 July 1992; many of the persons concerned were found dead a few days after their abduction was reported; 97 persons are still missing. The Human Rights Office of the Archdiocese reported three cases of enforced disappearance in the first half of 1992.

123. In March 1992 the National Police delivered to the President of the Congressional Human Rights Commission a list of 1,343 cases of "missing persons" reported to the police in 1991; the National Police considers 1,183 of these cases to have been cleared up, with 160 still under investigation. The governmental report adds that "statistical analysis has established that 1,285 cases are not enforced disappearances but absences due to migration to the capital, desertion of the home, family problems and other non-political reasons. On the other hand, the National Police found that 48 persons had been subjected to some kind of violence in the course of a presumed enforced disappearance. After careful study of the list furnished by the National Police to the President of the Congressional Human Rights Commission, the Expert concludes that in addition to the 160 cases regarded as still under investigation there are a further 80 cases in which the findings of the investigation do not appear sound.

124. The following reports of enforced disappearances of peasants in 1992 have been supplied by several human rights organizations: Roberto López Mazariegos, taken captive at the San Jerónimo estate, San Felipe Retalhuleu, (Department of Retalhuleu) by armed men on 1 April 1992; he was taken to the Retalhuleu military base, according to his relatives. Evelio Angel Monterroso Velásquez, in San Benito (Department of El Petén), disappeared while working on his land on 6 April 1992; his relatives fear that he was abducted by the State security services. César Augusto Linares Corrado, abducted from his house on the Blanca de Ocos estate, San Marcos, by armed men on 8 April 1992; according to witnesses, he was taken away in a military vehicle to a barracks in Santa Ana Berlín, Coatepeque. María Rosa de Jesús Alfaro Pérez was abducted in the vicinity of the main cemetery in Huehuetenango on 10 April 1992 by soldiers of the Huehuetenango military zone, according to witnesses.

125. The following are some of the reports of enforced disappearances of students in 1992: Edgar Alberto Estrada Villeda, a student leader aged 17, was abducted from his home in Colonia Montserrat on 12 January 1992 by unidentified armed men. Antonio Valdizón, a USAC engineering student, was seized by armed men who had pursued him in a motor vehicle in the streets of the capital on 13 February 1992; his companion witnessed the incident. Roger de León Reyna, aged 16, a secondary school student, and Angel Emérito Dujamel Ochoa, aged 14, were seized on 23 February 1992 by unidentified men as they were leaving the San Marcos Institute; they were both active in student

activities. Juana Lorenza Ajcoy Velásquez, a fifth-year teaching student, was abducted at the entrance of the Juan de León mixed teacher training institute by men who were waiting for her in a vehicle on 5 August 1992; she was a member of CERJ.

126. The trade union of the Roads Department Workers reported the enforced disappearance on 20 March 1992 of Salvador Gudiel Quiñonez who was a trade union leader. Noé Hernández Trejo, a Salvadorean businessman, was abducted from Guatemala City airport by armed men, according to witnesses, on 17 July 1992. Leonzo Erick Germán Ochoa was abducted from a street in Ixhuatán village, municipality of Pajapita (Department of San Marcos) on 4 September 1992. Esteban Tojín, aged 28, a member of CERJ in the canton of Cruzché II in Santa Cruz del Quiché, was abducted on 25 May 1992 by armed men; his wife stated that since February 1992 Esteban Tojín had been subjected to death threats by leaders of the civilian self-defence patrols in the canton of Cruzché. The Office of the Human Rights Procurator instituted habeas corpus proceedings, but the outcome is not yet known. In all these cases there were witnesses to the abductions.

3. Torture and ill-treatment

127. The Human Rights Procurator noted 56 cases of abuse of authority in his report on the first half of 1992. According to the Human Rights Commission of Guatemala (CDHG), 86 persons reported cases of torture during the first half of the year.

128. The situation of street children remains particularly worrying, for they are frequently victims of violence and ill-treatment by members of the Military Police Flying Squad and the National Police. The Casa Alianza association reported that for the period January to September 1992 it recorded 73 cases of crimes committed against street children, of which 15 are attributed to members of the National Police, 10 to members of the Military Police Flying Squad, 14 to members of the Treasury Police, one to a soldier, and the others to private individuals.

129. The Human Rights Procurator (report on the first half of 1992) processed in this period 38 reports of ill-treatment of minors. For example, when secondary school students protested about the shortage of teachers, the Human Rights Procurator reported that they were ejected by members of the National Police who "grabbed them violently" and took them to detention centres. In this report the Procurator censured the National Police and urged its members to comply with the law on human dignity.

130. On 20 January 1992, Amnesty International reported that Felipe González, aged 14, and José Corrado Mendoza, aged 18, were seized in Guatemala City by two unidentified armed men who beat them on the head and all over the body with their rifles, leaving them unconscious. The boys were taken to San Juan de Dios hospital where it was found that Felipe González could not open his eyes as a result of the beating; the Casa Alianza association reported the facts to the Eighth Criminal Court. Felipe González had been subjected to similar treatment a few days earlier.

131. This same organization reported on 18 March 1992 the beating of the children Melvin Enrique Girón and Omar Francisco Morán, aged 14 years, seized by two members of the Hunapú combined force. The children state that they

were beaten on the head and shoulders. Melvin Girón was also given electric shocks with a "Chinese stick" before being taken to the San José Pinul detention centre. The child David Estuardo Mejía Paiz was also abducted and ill-treated on 12 March 1992 by unknown persons who kept him blindfolded while they interrogated him about the activities of his brother Axel Mejía Paíz, Secretary-General of Casa Alianza.

132. With regard to the breaking up by the riot squad of the peaceful and authorized demonstration by peasants of the municipality of Cajolá on 21 July 1992, when a score of children, women and old people were injured, the Human Rights Procurator concluded on 24 July 1992 that it was "duly established that members of the National Police riot squad acted with unnecessary brutality, using excessive force with total disregard for the physical integrity and dignity of the demonstrators, thereby flagrantly violating the rights in question". He stated further "that the demonstration was peaceful and that at no time had there been any provocation or attack on members of the police forces which would have justified the attacks on the demonstrators, which violated other rights guaranteed by the Constitution". The Procurator concluded that the dispersal of the peaceful demonstration in the main square of Guatemala City had violated the rights of assembly, demonstration, dignity, and integrity and security of the person, as well as freedom of movement and action; he blamed the third-in-command and Inspector-General of the National Police and its Deputy Director-General, as well as the Minister of the Interior and the Director- General of the National Police; he also requested the authorities to have the perpetrators punished. Some days later, the then Minister of the Interior, Fernando Hurtado Prem, announced his resignation.

4. Arbitrary arrests

133. In his report on the first half of 1992 the Human Rights Procurator refers to 30 cases of illegal arrest in this period which his office had occasion to investigate. The Human Rights Commission of Guatemala (CDHG) reported 318 arbitrary arrests in the first half of 1992. Nine of the arrested persons also bore marks of torture. Obviously, there is a wide divergence between the figures given by the two institutions. The Expert cannot determine with sufficient certainty which set of figures is the more reliable. However, he wishes to recall that the Human Rights Procurator has by far better and more reliable means of investigating cases brought to his attention.

134. The information media refer periodically to ex-guerrillas who had responded voluntarily to the 1988 amnesty law but were then improperly detained at military bases. Church and human rights organizations fear that this procedure is used to conceal the detention of former members of the irregular forces, creating a new kind of illegal detention. In this connection, the following cases were reported for 1992: Verónica Ortíz Hernández, Oscar Ovidio Balam, María Tzina Chavajay, Gladys Eugenia Pérez, Abraham Morales Cáceres and Eliseo López Alcón who, according to the army, were ex-guerrillas who had abandoned their organization. These persons were handed over by the army to the Human Rights Procurator on 25 January 1992. The Procurator was subsequently able to establish that two of the men were in fact members of the army and that one of the women was under age; the third man, Eliseo López Alcón, was not a guerrila either but a member of the Communities in Resistance (CPR) of Chajul municipality (Department of El Quiché); he was taken back to his community in February 1992 by the Procurator

and the Expert himself. Verónica Ortiz was a guerrilla who had been captured wounded in combat by the army; once she had recovered from her wounds and had been placed under the protection of the Human Rights Procurator, she decided to take refuge in Spain.

135. Other cases are: María Angela Simón Misa, who had deserted and voluntarily accepted the amnesty, according to statements by the army to the press on 21 July 1992; immediately afterwards she was "under the protection of the armed forces in order to prepare socially and psychologically for her reintegration in society". Jaime Adalberto Agustín Recinos and Reginaldo de Jesús Pérez were presented to the press by the army on 16 August 1992 as having voluntarily accepted the amnesty and currently under army protection for security reasons. Tomás Velásquez Xon, who surrendered on 9 September 1992 to officers at Military Base No. 20 in Santa Cruz de Quiché in order to accept the amnesty; Tomás stated that, together with his family, he had been in the guerrilla forces for 11 years. However, his mother and brothers denied this, as they had always lived in Santa Lucía Utatlán, Chichicastenango; furthermore, his mother is a catechizer and member of the Guatemalan Widows' National Coordinating Committee (CONAVIGUA). The presumed guerrilla had also stated to the communication media that several human rights organizations were collaborating with the guerrillas. At present, Tomás Velásquez is still at Military Base No. 20. According to the Human Rights Office of the Archdiocese, none of these persons was brought before the courts to determine whether they had taken part in crimes against State security and to be tried. Accordingly, keeping these people "under army protection" avoids admission of the existence of political prisoners, but it also denies them the right to a fair trial and the right of defence.

136. Attention must be drawn to the case of Maritza Ninette Urrutia García, who was brought before a court on 29 July 1992 by the Public Prosecutor so that she could accept the amnesty under Congressional Decree No. 32-88 of 4 July 1988 (Diario de Centro América, 8 July 1988). Under article 1 of this Decree, "amnesty is granted to persons who, with any form of participation whatsoever, committed up to 23 June 1988 political and related ordinary crimes against the internal political order, the public order and social peace...". Pursuant to this Decree, the Judge of the Fifth Criminal Court of First Instance of Guatemala granted the woman amnesty on 30 July 1992, in the presence of the Public Prosecutor.

137. Maritza Urrutia had been seized in Guatemala City on 23 July 1992 by unidentified armed men who, according to witnesses, beat her and manhandled her into a white vehicle with darkened windows escorted by another vehicle with registration plate P-4980 (official use). On 29 July 1992 a videotape was sent to several television news programmes showing Maritza Urrutia confessing her links with a guerrilla group and her intention to break away from it, and denying that she had been abducted. On 30 July 1992 she returned home after having received the amnesty from the Judge of the Fifth Criminal Court of First Instance of Guatemala and sought protection in the Office of the Archdiocese of Guatemala; some days later she left for the United States where she remains today.

138. Now in Washington, Urrutia stated on 1 October 1992 to the Inter-American Commission on Human Rights that she had in fact been abducted by members of the army and forced to make self-incriminating statements before a television camera by means of psychological pressure and death threats directed against

herself and members of her family. According to this statement, Urrutia had left behind a letter dated 6 August 1992 addressed personally to the Expert, which was delivered to him when he began his visit to Guatemala; in this letter she confirms that she is a member of URNG and that on 23 July 1992 she was in fact forcibly abducted by four men in a white car to a place "where there was a parking lot with many cars"; here she was interrogated about letters which she had written to her son's father, "who is also a member of URNG". She was interrogated about her activities in URNG and kept in seclusion for eight days in a place "where there were several pale-yellow houses and where cars and motorcycles came and went all the time; there were at least two entrances, and I was about three metres from one of the streets". During the eight days of seclusion "about 30 persons came and went, all men; I heard a woman's voice only twice". On 27 July 1992, one of her abductors "told me that my letters had been dropped in a mailbox and that I was in the hands of the army and that only they had the authority to do what they were doing to me...". On another occasion, she noticed that "a person came in dressed in trousers of the colour worn by officers or generals...". After the interrogation, "I spent between six and eight hours recording a videotape giving an account of my disappearance, changing the content all the time". During the interrogation "there were constant threats of harming me or my family". She finally persuaded her captors to allow her to seek amnesty from the Public Prosecutor, and she was set free in the vicinity of his offices, where she was attended to by the person in charge, who helped her with the legal formalities of her amnesty petition.

139. On 6 October 1992, the Human Rights Procurator published a written opinion in which he states that the violation of the rights to freedom, security and integrity of the person and to freedom of movement had been violated in the case of Maritza Urrutia, "who had been a victim of enforced disappearance for eight days". The Procurator blames the Government "for failure to control certain groups" and demands from it "an effective investigation and speedy establishment of the facts, so that the perpetrators can be brought before the courts of justice and impunity thereby combated". The Procurator also requested the Government to provide appropriate protection for Urrutia's relatives living in Guatemala. In this opinion the Procurator explains that on 30 July 1992 he had a personal interview with her at the Human Rights Office of the Archdiocese, when he observed that "she was very emaciated and distressed and her emotional state was clearly much altered, with a corresponding impact on her physical condition, which was very poor, although she bore no physical marks of having been tortured; she said that she had not been beaten and had been given food". In this interview Urrutia requested him "to say nothing about what she was going to tell him, for fear of reprisals against herself and her family, for her captors had threatened to kill her and her young son if she talked...".

140. The Procurator naturally complied with this request for discretion and confidentiality for humanitarian reasons and reasons of professional ethics, so that in his letter of 13 August 1992 to the President of the Republic he omitted what Urrutia had told him in confidence. In this letter the Procurator informed the President of the Republic that, at her request, he had interviewed Urrutia at the Office of the Archdiocese, and that it was clear that "her emotional state was much altered, with a corresponding impact on her physical condition, which was very poor, although she bore no physical marks of having been tortured and in response to my questions said that she had not been ill treated"; it was clear that "she needed to feel safe and protected

and in her great despair she told me that she had decided to leave the country". The Procurator added in his letter that "in response to my questions ... as to whether she had been abducted or had disappeared voluntarily, she confirmed to me the version which she had given to the press a few hours earlier following her reappearance and visit to the Office of the Public Prosecutor and the court". The Procurator regarded his obligation of confidentiality to have ended once the woman made a public statement about the circumstances of her abduction on 1 October 1992 to the Inter-American Commission on Human Rights.

141. In these circumstances, the Expert considers the abduction of Maritza Urrutia to be sufficiently well proven and that there is reasonable evidence to suspect that the perpetrators are members of the State security services. Accordingly, it is the Government's duty to carry out an exhaustive investigation into the reported facts and, if the involvement of the security forces in the abduction is confirmed, the perpetrators should be punished, together with those who issued the orders, and the necessary action should be taken to prevent similar situations which jeopardize the rule of law, such as the continued existence of secret places of detention presumably run by the military intelligence services. The Expert recalls in this connection that in the case of Gonzalo Cifuentes Estrada (described in last year's report, E/CN.4/1992/5, para 114), charged with murdering the police agent entrusted with the investigation in the case of Myrna Mack, a video produced while he was under unlawful detention also played a central role. The video showed Cifuentes Estrada confessing that had killed Mérida Escobar. In the meantime, Cifuentes Estrada had been released, which in fact would appear to indicate that the video had been recorded under irregular conditions in an attempt to mislead the judicial authorities. The Expert sees no reason why Maritza Urrutia, on her own initiative, should have made a declaration, recorded on video, to the effect she had not been abducted. There consequently exists a strong presumption that, in accordance with what was said by the victim in October 1992, the recording was indeed made under the pressure of threats against herself and members of her family.

5. Threats and intimidation

142. Guatemala is still living in an atmosphere of widespread violence, with frequent threats and acts of intimidation. For example, reports were received in 1992 of the practice of selective death threats made against street children protected by the Casa Alianza association, against trade union leaders and human rights non-governmental organizations, and recently against organizations concerned with the protection of returned refugees.

143. In his report "The First Constitutional Period 1987-1992" the Human Rights Procurator notes, with respect to the right to security of the person established in article 3 of the Constitution, which imposes on the State the duty of safeguarding and protecting individuals, that in fact "the personal security of Guatemalans is constantly under attack from physical and moral violence and violence in the social, economic, religious and work contexts...". The Procurator concludes by emphasizing that "the situation of personal insecurity is alarming" and that the institutions see in this problem "only an unbreakable vicious circle".

144. The Human Rights Procurator stated that he had received 85 reports of death threats in the first half of 1992. The Human Rights Commission of Guatemala (CDHG) reported 97 cases of death threats between 1 January and 13

July 1992. The Centre for Human Rights Research, Study and Promotion (CIEPRODH) reported 77 cases of death threats and intimidation in the same period.

145. The Special Raporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, on the receipt of information that the lives of eight persons were being threatened, sent a letter to the Ministry of Foreign Affairs on 7 February 1992 requesting information about the measures taken by the Government to protect the lives and physical integrity of these persons and about the outcome. The persons were Armando Sánchez, Secretary-General of the Federation of Unions of State Workers of Guatemala, who was accosted on 26 January 1992 by an unknown person who gave him a note threatening him with death signed by a death squad known as "Unidad Anticomunista". This note also mentions the names of the following threatened persons: Amílcar Méndez, leader of the Runujel Junam Ethnic Communities Council (CERJ), Byron Morales, coordinator of the Guatemalan Workers' Union (UNSITRAGUA), Rosalinda Tuyuc, chairman of the Guatemalan Widows' National Coordinating Committee (CONAVIGUA), Nineth Montenegro de García, chairman of the Mutual Support Group (GAM), and Juan Mendoza, leader of the Peasant Unity Committee (CUC).

146. Rosa Pu Gómez, a member of CONAVIGUA, was accosted in the street on 31 January 1992 by an unknown man who pointed a rifle at her; the man questioned her about Juana Vásquez of CUC, Rosalinda Tuyuc and Luis Miguel Pajarito (husband of Rosa Pu Gómez and leader of the National Council of Displaced Persons (CONDEG), who has disappeared).

147. Francisco Tziac, aged 16, has been subjected to repeated death threats and acts of intimidation following the death of his friend Nahamán Carmona at the hands of four policemen on 4 March 1991; Tziac had witnessed Carmona's death on 18 December 1991 in Zone 1 of Guatemala City. He was seized by two men in civilian clothes who were driving a van but he managed to escape and take refuge in the offices of the Casa Alianza association.

148. Amílcar Méndez Urízar continues to be subjected to threats and intimidation. He is the leader of CERJ, which since its creation in July 1988 has suffered the murder or disappearance of 18 of its members. Amílcar Méndez was accused in 1992 by a military commissioner of having threatened to kill him and of maintaining contacts with URNH. CERJ denied the accusations against its leader, pointing out that the same tactics had been used against other leaders of people's organizations for the protection of human rights of the Catholic Church. The Government stated that it had assigned two members of the National Police to guard the home of Amílcar Méndez in Santa Cruz del Quiché after it had been attacked with explosive devices.

149. From a newspaper source, the Expert learned that early in November 1992 criminal charges were brought against Amílcar Mendez and that a judge in Santa Cruz del Quiché had issued a warrant for his arrest. Allegedly, Amílcar Méndez has provided arms to the guerrilla forces of the URNG. The Expert is deeply disturbed by this news. He has had many contacts with Amílcar Méndez and has known him to be a person honestly committed to the cause of human rights. He finds it extremely implausible that Amílcar Méndez should have engaged in acts of abetting the guerrilla forces in an unlawful manner. In this connection, the Expert wishes to recall that he received accurate information from the leader of CERJ many times. During his first visit to

Guatemala, he was called to the reception centre of CEAR in Nebaj where a group of persons had arrived which the armed forces had removed by force from their dwellings in Santa Clara. On that occasion Amílcar Méndez drew the attention of the Expert to the fact that during the operation, a woman, María Tojín, and her baby had disappeared at the hands of the armed forces. The Expert urged that an investigation be opened. It appears that no concrete results were obtained. No criminal charges were brought against the responsible officers. To date, the fate of María Tojín and her baby is still unclear. Amílcar Méndez had the courage to denounce publicly that failure of the system of criminal prosecution in Guatemala.

150. Leaders of trade unions and human rights organizations continue to be subjected to threats against their physical integrity. For example, Hermenegildo Blanco, a trade union labour advisor of the workers of the Costa Sur, on 31 March 1992; the sons of Victor Hugo Alvarez, branch secretary of the Union of National Electricity Board Workers in Chimaltenango; Marión Paul Alvarez Juárez, aged 13, and Hugo Ricardo Alvarez Juárez, aged 10, who were intercepted, abducted and subsequently set free by unknown men on 27 May 1992 as they were on their way to school; Jesús Miranda, secretary of the Workers' Union of the State Telecommunications Corporation (GUATEL) was knocked down on 2 July 1992 by a motor car which had followed him from a meeting of the National Federation of State Workers; Carlos Federico Batres Mena, secretary of the Guatemalan Education Workers' Union, who had to leave the country in July 1992, together with his family, after having received anonymous death threats; Byron Morales and Romeo Monterroso, leaders of the Union of Trade Union and People's Action (UASP), who were the victims on 21 October 1992 of an attempted abduction by armed men when they were organizing an event to celebrate the Nobel Peace Prize winner, Rigoberta Menchú; Jonás Vásquez Alvarado, general manager of the Guatemalan Chamber of Commerce, received threats in early October 1992; Carlos León Medrano, a doctor at the Cultural and Medical Care Centre of El Quiché, received death threats on 31 May 1992; Lorenzo Pérez, leader of the National Council of Displaced Persons of Guatemala (CONDEG), was attacked in Guatemala City on 23 April 1992. He had been subjected to a similar attack a month earlier by armed men driving a vehicle with the registration number P-2087, presumably owned by the Government; José Alberto Nerio Osorio, a teacher at the Centre for Human Rights Research, Study and Promotion (CIEPRODH), working in Chiquimula, was the victim of an attempted extrajudicial execution on 17 May 1992 when he was intercepted by two men who questioned him about his humanitarian activities and stabbed him in the stomach; Nerio Osorio is in charge of the investigation of a number of human rights violations committed by the security forces.

151. The State teachers in the municipalities of Santa Apolonia and San José Poaquil (Department of Chimaltenango) reported on 5 April 1992 that teachers in these two municipalities had been subjected to acts of repression by armed men. In addition, the Rector of the University of San Carlos reported that at least 15 professors on his staff regularly received death threats.

152. Members of the Catholic Church were also subjected to threats and acts of intimidation. For example, on 26 June 1992 the Salesian priest Tisiano Sofía left the country after having received repeated death threats; he said that there had been more than 30 attempts on his life in the eight years that he had lived in Ixcán, Playa Grande, El Quiché. On 27 July 1992 Archbishop Próspero Penados del Barrio stated that he had received death threats over the

telephone warning him to stop reporting violations of human rights. Furthermore, on 6 November 1992 a clandestine group known as "officers of the mountains" made public a communiqué accusing the Catholic Church and defenders of human rights working in the Church, in particular the lawyer Ronald Ochaeta, of being responsible, together with URNG, for a smear campaign against the army which had been "backed by the United States and the Catholic Church". This campaign was designed "... to achieve the reconversion, reduction and demilitarization of the armed forces...".

153. Judges and magistrates, policemen and prosecutors assigned to investigate crimes committed against presumed members of the armed forces or the PACs were repeatedly subjected to death threats in 1992. For example, there are the cases of the police officer Ernesto Rolando Corzantes Cruz and the prosecutor José López Mendoza, associates of the murdered policeman José Miguel Mérida, who was in charge of the investigation of the murder of Myrna Mack. The local justice of the peace in San Idelfonso Ixtahuacán (Department of Huehuetenango), Alejandro Alesio Quiñonez, also received threats on 9 May 1992 from PAC members in the village of Chiquilá, who compelled him to hand over three patrol members accused of murder. The Prosecutor-General of the Office of the Public Prosecutor, José Antonio López Mendoza, who is investigating the murder of Myrna Mack, was threatened on 27 June 1992. The secretary of the Quetzaltenango office of the Public Prosecutor, Manuel de Jesús Soto Rodríguez, was attacked on 29 June 1992 when two unknown men fired at him, wounding him in the abdomen. The magistrates of the Second Division of the Appeals Court, Mario Guillermo Ruíz Wong (President), Napoleón Gutiérrez Vargas (first member), and Héctor Hugo Pérez Aguilera (second member), received threats after imposing sentences including the death penalty on soldiers and drug traffickers. The examining magistrate of the municipality of Cobán, Alta Verapaz, Olga Esperanza Choc Joloma, was threatened on 25 July 1992 and subsequently resigned her post.

154. The surviving witnesses of the so-called "Escuintla massacre" in August 1991, in which 11 people were murdered, reported to the Public Prosecutor on 11 July 1992 that they had been subjected to constant threats by armed men who warned them to withdraw their accusations against the six soldiers alleged to be responsible for the massacre. Adelina López Castillo, the mother of one of the victims, stated that they feared for their lives.

155. Congressmen and members of political parties were also subjected to threats and intimidation. For example, on 2 March 1992 the former chairman of the Congressional Human Rights Commission and member of the Christian Democrat Party, Andrés Girón, suffered an attack with firearms and explosives by unknown men on his home in the municipality of Nueva Concepción (Department of Escuintla). On 4 May 1992 the deputy Juan José Alfaro Lemus, a member of the Solidarity Movement (MAS), reported that serious and constant death threats had been made against himself and his family and against 19 members of the political parties coordinating committee in the Department of Zacapa; the threats resulted from his investigation of the murder of the journalist Jorge Dardón, a correspondent of a United States radio station, by unknown persons on 20 August 1991. On 7 April 1992, the deputy Fredy Noel Berganza of the National Union Party reported that he had been subjected to death threats and intimidation by armed men who shadowed his movements; Berganza said that these acts of intimidation were due to the reports which he had made about the alleged corruption in a government project of the International Fund for Agricultural Development. On 9 June 1992, the leader of the Democratic Union

Party Jorge Antulio Méndez was victim of an attempted abduction and was threatened with death by armed individuals, according to reports transmitted by the secretary- general of his party. On 5 July 1992, the deputy of the Christian Democrat Party Carlos Escobedo and his companion Alvaro Raúl Palencia del Cid were seriously wounded as they alighted from a motor car in Zone 1 of Guatemala City when they were attacked by unknown persons who fired at them from short range.

156. Members of the press and student groups have also been victims of this phenomenon of intimidation, in some cases involving incendiary and explosive devices. In this connection, a bomb explosion was reported at the premises of the Association of University Students (AEU) on 2 February 1992, in the humanities faculty of Quetzaltenango. On 25 February 1992, another bomb exploded outside the old law faculty building, in the centre of Guatemala City, and other explosive devices were deactivated in the university buidling, in the law, medicine and economics faculties. The Rector of the university reported that 15 university professors in various faculties had been receiving death threats. On 20 April 1992 bombs were deactivated in the university building, in the law, medicine and economics faculties. On the same date the Quetzaltenango humanities faculty was set on fire. In October 1992, bomb attacks were reported on the premises of the periodical Tinamit and the headquarters of the Association of University Students (AEU) in the capital.

157. Government statements blamed URNG for these attacks. However, URNG rejected any responsiblity and in turn accused "circles opposed to the negotiations which are seeking, by means of terrorism, to create confusion in order to bring about the declaration of a state of emergency which will facilitate generalized repression".

6. Secret graveyards

158. On the initiative of human rights organizations such as the Guatemalan Widows' National Coordinating Committee (CONAVIGUA) and the Mutual Support Group (GAM), which have joined forces in the "Groups which have suffered as a result of repression and impunity" (SDRI), are continuing the work of exhuming the remains of persons buried in secret common graves. The secret burials took place mainly between 1979 and 1982, and the bodies were those of victims of the counter-insurgency tactics used by the security forces at the time. Most of the bodies recovered had their hands tied behind their backs; the vicims had been shot and in many cases the corpse bore the mark of a coup de grace.

159. According to the Human Rights Commission of Guatemala (CDHG), more than 140 secret graveyards have already been found, mainly in the Department of El Quiché, and most of the exhumed corpses were of indigenous people. SDRI sought the assistance of the Supreme Court of Justice in securing the assignment of a forensic medicine team to work, in coordination with SDRI, on the exhumation of corpses. The Ministry of Defence announced on 7 September 1992 its intention to coordinate with the Foreign Ministry legal proceedings against individuals and international human rights organizations which had accused the army of responsiblity for massacres in the past.

160. CDHG issued a report concerning members of people's organizations who were working on the exhumation of corpses in order to identify them, give them legal burial, determine the causes of death and, if possible, identify the

perpetrators and request that they be brought to justice. They had been subjected to repeated threats by members of the army and civilian patrols to the point that, on some occasions, the exhumation work was interrupted by the constant harassment.

161. In mid-February 1992, following reports by local people and relatives, judicial officials had eight skeletons exhumed from land belonging to residents of the municipality of Sacapulas (Deoartment of El Quiché). The victims were four men and a woman who were identified, and three persons who could not be identified. In addition, in Las Flores village in the same municipality the remains of four persons were found, of which three could be identified. On 16 May 1992, the Judiciary suspended the exhumations in the canton of Tunajá in the municipality of Zacualpa (Department of El Quiché), on the ground that the judicial official in charge of this work had been transferred to another post. According to CDHG, to date the exhumations in Zacualpa have produced 48 corpses of persons alleged to have been murdered by soldiers and PAC members in the early 1980s.

162. On 7 July 1992, a secret burial site containing the bodies of three persons was found on the Variedades estate in the municipality of Santa Bárbara (Department of Suchitepéquez).

163. CONAVIGUA reported on 14 July 1992 that a team of forensic anthropologists - mostly Latin Americans - had arrived in Guatemala to exhume remains in secret graveyards in the villages of Tumajá, Chontalá and Chichicastenango (Department of El Quiché). A few hours after beginning their work in the town of San José de Pochol in the same department, this group of scientists, led by the United States anthropologist Clyde Snow, had exhumed the remains of 10 peasants. Leaders of GAM and CONAVIGUA stated that the victims were just 10 of the 45,000 arrested/disappeared Guatemalans. This same group of scientists exhumed and identified the remains of 12 peasants buried in a secret graveyard in the place known as La Quebrada, San José Pacho de Lemoa village, municipality of Santa Cruz (Department of El Quiché). All the victims were found face-down, with their hands tied behind them, and each had several bullet wounds in the head. Local residents stated that the victims had suffered extrajudicial execution on 14 February 1982 during the de facto regime of General Efraín Ríos Montt.

B. Freedom of expression

164. During his five visits to Guatemala the Expert has been able to verify that freedom of the press does exist in general terms, for there are various daily, weekly, fortnightly or monthly publications with national circulations, which keep the people informed about what is happening both in Guatemala and on the international scene. Violations of human rights are regularly reported in the national press, together with the official opinions - although not quoted in full - of the Human Rights Procurator criticizing agents of the State. However, journalists seem to avoid making direct accusations against the Government or the armed forces regarding politically motivated crimes, since they fear for their lives. Nor can it be said that there is an authentic investigative journalism which would represent conclusive proof of real freedom of the press.

165. Journalists' associations have reported that President Serrano met with the Editor of the daily periodical Siglo Ventiuno, José Rubén Zamora, and with the Editor of the review Crónica, Francisco Pérez de Antón, allegedly to

convey to them his concern about the criticism of his Government in these publications. Press reports also stated that the Government had brought pressure to bear on some senior officials of television channels to recommend changes in the staff concerned with the production of news programmes, or allegedly to terminate certain programmes hostile to the Government. In addition, it has been reported that the President's public relations office distributed a circular entitled "Limits on the freedoms of thought, opinion and information". In this connection, the Guatemalan Chamber of Journalism stated that the lack of adequate legislation on the communication media increased the insecurity of journalists.

166. Similar reports by journalists' associations stated that several of their members were subjected to death threats in 1992; for example, Leonel Gutiérrez, of Siglo Ventiuno, and José Eduardo Zarco Bolaños, Néstor Hernández, Alvaro Gálvez Mis, Silvino Velásquez and Arnoldo Girón, of Prensa Libre. Girón was victim of an attempted abduction and was wounded on 10 March 1992. The deputy editor and leader-writer of the periodical Galaxia 2000 was also threatened by unknown persons. Ricardo Castro, presenter of a public affairs programme of the State broadcasting station TGW, was wounded by shots fired by unidentified men in Guatemala City on 20 June 1992.

C. Freedom of Association

167. Freedom of association is one of the cornerstones of a free and democratic society. By forming or joining associations, individuals are able to pursue common goals of whatever nature. In the contemporary world, the political life of any nation is to a great extent based on the interaction between different organized groups which act as catalysts for the different currents of opinion existing in the population. Thus, democratic institutions may grow up from the grass-roots level.

168. The Constitution of Guatemala (art. 34), as well as the International Covenant on Civil and Political Rights (art. 22), both guarantee freedom of association. The Covenant explicitly provides that freedom of association is a right of "everyone", that is to say a right of nationals as well as of aliens. Nonetheless, according to the legislation in force in Guatemala, an association acquires legal personality only after an application for such status has been granted. In other words, the forming of an association is subject to prior authorization. This is not a simple formality. The International Peace Brigades, for instance, informed the Expert that their application to be recognized as a distinct legal person has been pending for years. Some religious communities, too, complained that long delays characterized any such proceeding. The Expert finds no justification for a legal regime which permits public authorities political discretion in granting or dismissing an application by an organized group wishing to act as an association for legal personality. In any event, under the Covenant, States have a duty to respect and facilitate freedom of association, unless specific criteria, listed in the limitation clause of article 22 (2), are met.

169. Freedom of association is also put in jeopardy through other developments. Many of the human rights organizations which were established under article 34 of the Constitution of 1985 are almost constantly criticized not least by representatives of the Government, as damaging the country's reputation because they denounce human rights violations in Guatemala; these organizations are frequently characterized as the political arm of the URNG.

The Expert strongly disagrees with such demagogic attacks which seek to push the human rights organizations into the camp of the enemies of the State, close to the line where the reign.of criminal law begins. Guatemala, its citizens and its political leaders, and in particular all holders of public office, must accept the principle of political pluralism as it is enshrined not only in the International Covenant on Civil and Political Rights, but also in the Constitution of Guatemala itself. Guatemalan citizens can, and are entitled to, have different views as to the substantive policies the State should pursue, the role of public institutions and the place of the armed forces in a democratic society. It is also obvious that there is nothing wrong with most of the objectives presented by the URNG in the booklet, issued in May 1992, ("Just and democratic peace: content of the negotiation") in which it defines in detail its stand concerning the peace negotiations.

170. One may not share the general line of reasoning of the URNG, but to request reforms, even sweeping reforms, cannot be held to be an unconstitutional act.

171. In a genuinely democratic society, there are only a few limits to what a group may legitimately advance as its political agenda. No one may challenge the democratic principle itself, no one may challenge human rights and fundamental freedoms, including the basic principle of political equality of all citizens, and no one may advocate recourse to violence as the appropriate instrument to resolve the problems of the nation. Within these parameters, there is ample room for political manoeuvre through appropriate democratic procedures. A Government that is supported by political forces of the right or the centre of the political spectrum is nonetheless obliged to accept that leftist political aspirations are being articulated, and vice versa. It would be fatal for the political future of Guatemala if an opinion put forward by an individual or a group that coincided with the views of the URNG was dismissed as being unacceptable a priori. Such rash judgements should be eschewed.

D. Freedom of correspondence and communication

172. Several persons told the Expert during his visit to Guatemala that to their knowledge the intelligence services of the State controlled postal correspondence on a massive scale and that there was also a widespread practice of telephone-tapping by the same services. In fact, some of the Expert's interlocutors told him that letters and parcels from abroad had reached them in an irregular manner; in some cases, the mail had clearly been opened. The Expert raised the issue with the Minister of the Interior, Francisco Perdomo. The Minister responded that he knew nothing about the practices complained of and that he would look into the matter. The Expert wishes to recall the guarantees enshrined both in article 24 of the Constitution of Guatemala and article 17 of the International Covenant on Civil and Political Rights. Both provisions permit restrictions; however, these must be established by law and formal procedural requirements must be complied with. Actions by the intelligence service outside this legal framework would be clearly unlawful.

E. Judicial protection of rights

173. Some efforts were made in the course of 1992 to make the judicial system work better. Of particular importance was the creation of 133 lower courts in the interior of the country which will have bilingual staff and will benefit a

large number of people. Training programmes were also established for juvenile court and family judges by the Supreme Court of Justice and the Office of the Human Rights Procurator. The School of Judicial Studies was also established, with a specific course on human rights.

174. The Congress approved in the 1992 budget legislation an appropriation of 20 million dollars for the modernization of the Judiciary and the Office of the Public Prosecutor. The Congress also approved, in September 1992, the new Code of Criminal Procedure. It is hoped that these measures will enable the judicial authorities to take more effective action in future against impunity and corruption.

175. However, no headway was made in 1992 on the suggestion in earlier reports that a central investigating unit should be established within the National Police to look into all cases of enforced disappearances, extrajudicial executions and other forms of political crime, including threats and short-term abductions (E/CN.4/1992/5, para. 139). The aim is to consolidate a professional police force to replace the "system for the protection of citizens" (SIPROCI) or experiments such as the Hunapú combined force, in which the military presence creates the impression that the National Police depends on the armed forces in order to combat crimes and violence effectively and with success. Unfortunately, little has been done in this direction and, although civilians still head the Ministry of the Interior and the National Police, the latter body retains military men in charge of its various departments.

176. The military justice system, whose jurisdiction remains excessively broad, is another disruptive element in the administration of justice. For example, in 1992 the Judge-Advocate (Auditoria de Guerra), acting as court of first instance, condemned to 30 years of imprisonment Corporals Nicolás Gutiérrez Cruz and Eliseo Ramos Suchité, members of the Miliary Police Flying Squad (PMA), for their part in the murder of a family on 17 January 1992 in Ciudad Peronia (see above, paras. 106-117). At the stages of appeal and cassation, the Court of Appeal and the Supreme Court, in separate sentences, condemned the accused to death. Shortly afterwards the condemned men escaped from the barracks where they were being held. General González Taracena, the officer commanding the barracks, was removed from his post, and other middle-ranking officers were tried for alleged negligence in the performance of their duties; they were later set free. As for the condemned men, Nicolás Gutiérrez was recaptured, but Eliseo Ramos is still at large. The imminent execution of Nicolás Gutiérrez was announced immediately the Supreme Court's death sentence had been confirmed. Accordingly, on 18 August 1992 the Special Raporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions sent an urgent communication to the Ministry of Foreign Affairs inviting the Government to grant the condemned man the right to petition for commutation of the sentence, as provided for in the international treaties ratified by Guatemala. He also expressed his concern about a number of procedural irregularities in the proceedings against Gutiérrez Cruz, in particular the absence of the defence lawyer during his examination. Meanwhile, an application for amparo on behalf of the condemned man was made to the Court of Constitutionality and was accepted in October 1992, with the result that the Supreme Court was ordered to arrange a retrial with three civilian and two military judges to hear the application for cassation in the case of Corporal Nicolás Gutiérrez, thus annulling the immediate enforcement of the death sentence since the case would have to be referred back to the court of second instance.

177. The Expert followed the case closely and hopes that, if the death sentence is reimposed, the condemned man will be granted the opportunity to petition for its commutation. Furthermore, punishment should be meted out both to the material perpetrators and to the moral ones, if any, of the murders in Ciudad Peronia. Lastly, the fact that the officer commanding the barracks from which the offenders escaped was removed from his post implies negligence or complicity which ought to be investigated with equal vigour.

178. In the case of Michael Vernon Devine, a United States citizen murdered on 8 June 1990 in El Petén, an army captain and a colonel were prosecuted for allegedly ordering the murder (for details see E/CN.4/1991/5, para. 122, and E/CN.4/1992/5, para. 147). The military court released the first of the accused on bail and the second unconditionally. However, it sentenced to 30 years of imprisonment the soldiers Daniel Tolón Rodríguez, Tiburcio Hernández Hernández, Oliverio Arellano Valdez, Joaquín Alfaro Avelar, Francisco Salval Santay and Rafael Tiul Cucul, as material perpetrators of the murder. The Public Prosecutor appealed against the acquittal of Captain Hugo Roberto Contreras Alvarado, identified by his junior officers as having ordered the murder. He also appealed against the sentence imposed on the soldier Rafael Tiul Cucul on the grounds that he was a key witness in the case and, although involved in the preliminaries, had taken no part in the murder. Meanwhile, Colonel Guillermo Portillo Gómez remained at unconditional liberty, although it is believed that he ordered the abduction and murder.

179. With regard to the judicial investigation into the murder in September 1990 of the anthropologist Myrna Mack Chang and of police officer José Miguel Mérida Escobar, who was investigating the case (murdered on 5 August 1991) (for details see E/CN.4/1992/5, paras. 96, 114 and 149), the court summoned the political and military officials in charge of the Office of the President's General Staff to testify, as the employers of Noel de Jesús Beteta Alvarez, accused of being one of the material perpetrators of Mack's murder. On 26 October 1992 the Human Rights Procurator gave his verdict on the Myrna Mack case, stating that she was "the victim of an extrajudicial killing for political reasons, responsibility for which rests with the State security forces and the Government in power at the time", i.e. of the former President Vinicio Cerezo. The judicial investigation is still being improperly obstructed owing, inter alia, to the repeated replacement of the examining magistrate in the case. Ex-president Cerezo, although summoned several times to appear as a witness and to testify in the case, in 1992 has refused to heed that request; he testified once, on 20 November 1991. On the other hand, General Edgar Godoy, the superior of the accused Noel Jesús Beteta Alvarez, complied eventually with a judicial summons to testify. According to the present legal position in Guatemala, the public is totally excluded from such hearings and cannot follow the course of the investigation.

180. Throughout 1992 leaders of the Judiciary trade union and the Judges' and Magistrates' Association protested to the Judiciary about the ill-timed transfers of judges and magistrates, ordered for no apparent reason. These transfers had an adverse effect on the investigation and progress of a number of key human rights cases. In one of these cases, the Court of Constitutionality accepted an application for provisional amparo in October 1992. This was the case of the judge of the Criminal Court of First Instance of Guatemala, Leticia Stella Secaira Pinto, who was suddenly transferred in July 1992 to the municipality of Guastatoya (Department of El Progreso). The judge had issued the act of amnesty for the teacher Maritza Urrutia (see

above, paras. 133-141). She had also been in charge of judicial proceedings relating to human rights violations such as the murder of the monk Moisés Cisneros and the abduction, torture and rape of the nun Diana Ortiz.

181. In August 1992 the Judge-Advocate dismissed "for lack of evidence" the charges against seven officers and men of the Pacific Naval Base who had been accused of killing 11 persons on 9 August 1991 on the Escuintla-Taxisco road, after having abducted and tortured them. General Luis Enrique Mendoza, Minister of Defence at the time of the incident, had publicly acknowledged the responsibility of the seven men in a press release of 15 August 1991 in which the arrest of the accused was also announced (for details see E/CN.4/1992/5, para. 152), including Captain Aníbal Rubén Giró Areola and Commander Mario García. The Public Prosecutor had requested the Judge-Advocate to impose the maximum sentence of 30 years of imprisonment on those responsible for the killings. According to the Government, the officers had been held under arrest in the headquarters of the Military Police and the soldiers in the Zone 18 pre- trial detention centre. The case is now pending appeal by the Public Prosecutor.

182. The Public Prosecutor appointed a special investigator in the judicial investigation into the abduction, rape and torture of the United States nun Diana Ortiz. She had travelled to Guatemala in order to make a statement on 7 April 1992 before the Fifth Criminal Court of First Instance. The judicial investigation does not seem to have produced any tangible results so far.

183. In the case of the murder of Moisés Cisneros, the Second Criminal Court of First Instance issued an arrest warrant against a fourth person. The case is now proceeding to trial, and the accused are being kept in the Zone 18 pre-trial detention centre in Guatemala City.

184. In the case of the murder of the 13-year-old boy Nahaman Carmona López by members of the National Police on 4 March 1990 when he was sleeping in the street together with other boys, the Government announced that three policemen had each been sentenced to 12,5 years of imprisonment and had been fined. Rolando Aguilar Dueñas, convicted of having ordered the murder, was sentenced to 18 years of imprisonment and a fine of 4,000 quetzales.

185. Two members of the National Police and a civilian, prosecuted for the murder on 25 June 1990 of Anstraum Amán Villagrán Morales, aged 17, were set free on 17 January 1992 by the Third Criminal Court "for lack of evidence", although the technical evidence had established that the bullet which killed the boy had been fired by one of the weapons carried by the policemen. These three persons had also been accused of abducting eight children from the street in June 1990; several of them were found dead with marks of torture. The case is being appealed.

186. With regard to the progress of the proceedings brought against members of civilian patrols and military commissioners, the Human Rights Office of the Archdiocese reported that many complaints lodged with rural courts with respect to the abduction and execution of peasants allegedly by commanders of the civilian self-defence patrols (PAC) and their men are not being properly investigated and are shelved "as lacking merit" at the stage of preliminary hearing. One example is the case of the peasant Diego Domingo Martín, father of six children and not a political militant, who was abducted by presumed PAC members on 9 November 1991 in the presence of his family; since then his whereabouts have been unknown. His wife reported his disappearance on the

following day to the court of the municipality of La Democracia, to the National Police and to the Office of the Deputy Human Rights Procurator in Huehuetenango. On 15 November 1991 the justice of the peace in La Democracia requested 50 quetzales from the victim's family to travel to Ixconén to make a formal deposition on the abduction. On 12 November 1991 the Human Rights Office of the Archdiocese instituted habeas corpus proceedings with respect to Diego Domingo Martín, which were declared inadmissible by the court. On 26 November 1991 the family, with the assistance of the Office, lodged a complaint with the Courts Supervisory Board against the justice of the peace and the judge of the Second Court of First Instance of Huehuetenango for unprofessional behaviour. The Board replied on 6 March 1992 that "the complaint was not justified". Lastly, on 7 September 1992 members of the Human Rights Office examined the register of the Second Court of First Instance of Huehuetenango in connection with this case. According to the register, the man accused of the crime is Diego Sánchez (commander of the patrols which abducted the victim) and states, with the words underlined, "ACCUSED ARRESTED". However, according to the officers of the Second Court, the accused was never arrested.

187. It can be seen that large and obvious defects persisted in 1992 in the administration of justice system, both under military and under civil jurisdiction. The judicial investigations into blatant cases of human rights violations are dragged out unnecessarily over years and produce very few practical results. Given this situation, the few judges and persons in authority who have shown a genuine interest, and the relatives of the victims and the human rights bodies which assist them, are obstructed in their efforts to establish the facts and to identify the guilty parties and bring them to justice, in order to put an end to impunity. As was stated in the previous report, "... with such results, the population has little faith in the proper administration of justice, i.e. in one of the basic pillars of a State governed by the rule of law" (E/CN.4/1992/5, para. 141 in fine).

188. The Office of the Human Rights Procurator instituted in the Court of Constitutionality on 9 April 1992 a recourse of unconstitutionality citing articles 81, 89, 109, first paragraph, 110, 113, 115, 131, first paragraph, 133, 255, 257 and 317 of the Civil Code as violating the principles of equality and non-discrimination between the sexes established in the Constitution (articles 4, 5, 47, 63, 101, 102 and 136). In fact, the current Civil Code makes important distinctions with respect to the minimum age of marriage (16 years for males and 14 for females: art. 81), it specifically prohibits women from marrying for 300 days from the date of dissolution of a previous marriage (art. 89), accords the husband the right to represent the family (art. 109.1), and restates the traditional division of roles between husband and wife which can involve discrimination against the wife, since she is relegated to the role of caring for the children and performing domestic chores (art. 110). In addition, article 113 of the Civil Code allows women to hold jobs only when this does not prejudice the children or the home, and article 114 allows the husband to object, in certain circumstances, if the wife engages in activity outside the home. Article 131.1 entrusts to the husband the management of the conjugal assets, and article 255 accords to the father the right to represent a minor or incapacitated child and entrusts him with the management of their assets. The unconstitutionality proceedings were in progress in the Court of Constitutionality when the writing of this report was concluded.

IV. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. The economic and social situation

189. Enjoyment of economic and social rights by everyone is determined on the one hand by governmental policies and, on the other, it is also determined by external factors which are independent of the will of the Government. Guatemala is not self-sufficient, but relies largely on exports to earn foreign currency permitting it to cover needs which cannot be produced at home. From this perspective, the dramatically low prices of many traditional export goods, in particular coffee, is a hard blow for the Guatemalan economy. The Expert wishes to express his concern about the plans of the European Community to impose higher customs duties on bananas imported from Latin American countries in order to favour bananas grown in the ACP countries. Such plans would severely hurt Guatemala and its neighbours and would negatively affect all efforts concomitantly undertaken to assist the economic development of these countries.

190. Economic and social development are intimately connected to the effectiveness of civil and political rights. A country where the most elementary asset of every human being, its life, lacks appropriate protection does not attract foreign investment and is not even attractive as a place of investment for nationals, who instead prefer to carry their monies to safe havens abroad. The national community as a whole, and in particular its political and economic elites, should understand that by giving in to the temptation of applying violent means they frustrate any chances for sustained development.

191. It is obvious that, given its current low GNP, Guatemala is not in a position to satisfy all needs and fulfil all the expectations which may have been raised by the entry into force of the International Covenant on Economic, Social and Cultural Rights. Nonetheless, Guatemala may have to revise its political priorities precisely in light of the international commitments flowing from that treaty. It has never been seriously contested that the country still has one of the lowest tax rates in the world, although the Government of President Serrano has reformed the system of taxation. Therefore, only rather modest amounts can be made available for social purposes. The deficient system of education, inherited from the past, necessarily has a negative impact on the economy which needs skilled workers and employees in order to reach a level of international competitiveness. Thus, the situation of poverty and social neglect threatens to end up a vicious circle. Strengthening real enjoyment of economic and social rights is therefore an indispensable element of a successful development policy.

192. Eighty per cent of the approximately nine to ten million inhabitants of Guatemala live in rural areas; a large part (70 per cent) of the peasant population is made up of several ethnic groups of Mayan origin, and the remainder are "Ladinos", the descendants of intermarriage between the Spanish conquerors and the indigenous population. The 1992 situation shows no significant improvement in the living conditions of these two groups. Eighty-five per cent of Guatemala's population lives in poverty (E/CN.4/1992/5, para. 153); 54 per cent of them are regarded as living in "extreme poverty", meaning that they cannot satisfy their basic food needs, and the remaining 32 per cent are only just able to do so. As a result of this situation, the malnutrition

rate among children aged under five years old is 73 per cent, which is a factor in the high infant mortality rate which, according to UNDP figures for 1989, was 97 per thousand, double that of the other Central American countries.

193. In addition to these enormous deficits, shortcomings have been reported in the distribution of international food and medical aid by government officials. For example, non-governmental organizations reported in July 1992 that 46/ million pounds of food and medicine donated by FAO were rotting in port warehouses, apparently because the authorities lacked the necessary means of transporting this aid to the country's poorest people. The President of the Republic stated that the items had reached Guatemala in poor condition.

194. The report of the Human Rights Procurator on the first half of 1992 states that "the social upheavals which are the root cause of Guatemala's classification as an underdeveloped country are worsening even further. The situation is even more desperate since there is no sign of the application by the Government of a global social policy which would make it possible gradually to integrate the majority of Guatemalans in a process of economic and social development". The report emphasizes that "the economic and social indicators merely reflect the denial of economic, social and cultural rights and testify to the failure to satisfy the most basic needs of the majority of the population, especially rural and indigenous people".

195. In his written opinion on the electricity tariff increase planned for 1 September 1992 the Human Rights Procurator states that "the Government has adopted an economic, exchange-rate and lending policy designed to reduce the country's global deficit at a high social cost which has had a serious impact on the people, especially the poor, i.e. more than 80 per cent of them". For example, "the gradual removal of subsidies has applied only to essential services such as electricity, water and transport, while other sectors are still subsidized". The increase in the cost of electricity, which according to some estimates may be as much as 50 per cent in 1992, is regarded as "extremely damaging" by the Human Rights Procurator, for only 30 per cent of Guatemalans have electricity, and the remaining 70 per cent will thus have no possibility of access to it. Lastly, the Ministry of Energy and Mines stated on 26 October 1992 that the study on the advisability of increasing the electricity tariff was not yet completed.

196. The internal armed conflict in the country and the widespread violence, according to unofficial estimates, has produced some 75,000 orphans and 50,000 widows, in addition to thousands of internally displaced persons who can find no land to grow their food crops and whose emigration to urban areas in search of work has caused the so-called informal sector to expand to 53 per cent of the economically active population, according to 1989 figures of the National Statistical Institute; the situation has not improved since then. This has a plain impact on the people's already precarious living standards: it is estimated that about 700,000 people - 30 per cent of the inhabitants of the metropolitan area - live in the capital's 176 shanty towns, which lack basic services such as water (only 4.5 per cent of poor households have a drinking water supply), electricity, drainage, health and education. There is no refuse collection service in most of the marginal areas, and the bulk of the refuse is dumped on the hillsides or in the alleys of the neighbourhood. Since there is no adequate drainage infrastructure, rainfall causes floods after which every kind of waste matter can be found in the streets; this

increases the incidence of epidemic diseases such as cholera and diptheria and of gastro-intestinal ailments. It must be stressed that Guatemala's estimated 5,000 street children are the first victims of this situation.

197. The joint pastoral letter of the Bishops of Guatemala "Five Hundred Years spreading the Gospel", published by the Episcopal Conference of Guatemala on 15 August 1992, states that "the disintegration of the traditional systems of organization, authority and government of the indigenous communities, and the lack of effective legal organs to guarantee the common good and respect for life and promote the protection of the most legitimate and fundamental rights of every human being have contributed to the growth of extremely serious social and economic inequalities". According to the Bishops, the indigenous people are "those who suffer most from impoverishment, abandonment, destitution and death. Paradoxically, they are the ones who are most unjustly forced to work to produce the profits and capital of those who control the means of production in Guatemala".

B. Trade union rights

198. Formal employment has contracted sharply since the 1980s, and the level of the period 1985-1990 has not been seen since then. According to a 1992 study by the Office of the Human Rights Procurator, "the present rate of development is not slowing the general downtrend in the market, for underemployment increased from 29 per cent in 1980 to 34 per cent in 1990, causing the overall unemployment rate to climb by 9.9 per cent from 31.2 per cent in 1980 to 41.1 per cent in 1990". This report regards the labour force's low level of skills training as an important factor in this situation.

199. In May 1992, the Ministry of Labour and Social Welfare, together with the two main unions of State workers (FENASTEG and FENASEP), created the National Commission on Job Security, Wages and Productivity, charged with the task of devising wage policies and ensuring security of public-sector jobs.

200. The Human Rights Commission of Guatemala reported that the minimum wage established by law for farm workers was insufficient to meet their basic needs. According to statements by the Peasant Unity Committee (CUC), it takes 25 quetzales a day (equivalent to five dollars) to satisfy the basic needs of a peasant family. The minimum wage for farm workers has been set at 10 quetzales a day, while in other sectors it is 15 to 17 quetzales.

201. The Human Rights Procurator received a complaint from a group of workers from various manufacturing plants concerning serious defects in their working conditions. He concluded that the "General Labour Inspectorate had not exercised strict control over the employers in the firms Maquiladora Daram S.A. and R.C.A.S.A., thereby damaging the interests of the workers and violating their labour rights and the rules concerning minimum wages, length of working day, rest periods, women's and children's work, holidays, and labour hygiene and safety". He therefore requested the General Labour Inspectorate to take the necessary corrective action and the Director-General for Migration to investigate whether the Korean managers of the plants in question were in the country legally.

202. Several United States organizations have submitted complaints concerning trade union rights to the Office of the United States Trade Representative, requesting that Guatemala should be excluded from the United States

generalized system of trade preferences. In fact, the AFL-CIO has been reporting Guatemala since 1986 for violations of the freedoms of assembly and trade union organization, for allowing forced labour and exploitation of child labour, and for the unacceptable situation with regard to minimum wages and job security.

203. The Human Rights Procurator noted in his report "The First Constitutional Period 1986-1992" that "the lack of workers' protection organizations and the workers' low rate of membership in such organizations are due mainly to the repression of these activities". The report adds that "Guatemala's trade union leaders have been subjected to the cruelest violations of human rights and have provided most of the names in the lists of extrajudicial killings and enforced disappearances; and this has happened in retaliation for their defence of labour rights or as a result of the intolerance generated by the internal armed conflict". The Human Rights Procurator also refers to the shortcomings of the Ministry of Labour and Social Welfare, which has a very small budget and an insufficient number of labour inspectors to carry out the work required of it. Since their establishment, the number of labour tribunals in Guatemala City has remained unchanged even though the economically active population has grown considerably. This suggests that the administration of labour justice cannot be effective and that the Government lacks the political will to provide legal protection of labour rights. The Procurator notes further that "in recent years there has been an increase in the number of employers who disregard the orders and decisions of the tribunals and of employers who disregard the law, especially with regard to the formation of trade unions, hygiene and safety, minimum wages, and compensation and payment for length of service, all of which constitutes yet another kind of impunity: employers' impunity" (pp. 63 and 65 of the report).

204. The report of the Human Rights Procurator on the first half of 1992 points out that the National Typographers' Union reported a series of "acts of repression and malpractices in the work place on the part of the national typography authorities", which refuse to issue the necessary permits and safe-conduct passes for the performance of their trade union functions, thereby disrupting the functioning of the union.

205. The Government stated, with respect to freedom of association, that it had taken measures to amend the procedure for the acquisition of legal personality by trade union organizations, declaring inapplicable a number of juridical decisions and opinions which were not envisaged in the law and caused delays in the procedure, thus ensuring compliance with the decisions of workers to organize trade unions in accordance with the provisions of ILO Convention No. 87 on freedom of association and protection of the right to organize, and according legal personality by ministerial instead of by governmental decision. This Government statement adds that the Ministry of Labour had strengthened the Office of the General Labour Inspectorate with respect both to its structure and to its monitoring of compliance with the labour laws, with the result that official inspections were carried out in the manufacturing industry and more than 150 complaints were lodged with the labour tribunals.

206. In addition, on 11 November 1992 the National Congress approved Decree 64- 92 which contains 33 amendments to the current Labour Code, the most important of which are: (i) the amendment of article 78 to provide that a dismissed worker is entitled to summon the employer before the tribunals in

order to demonstrate just cause for the dismissal; (ii) article 209 prohibits the dismissal of a worker for taking part in the formation of a trade union and accords him security of employment from the time when the procedures for the formation of the trade union are begun; the period is now established as 60 days from the granting of legal personality to the organization; (iii) the period of prenatal and postnatal leave is increased to 84 days, and employers are required to grant leave of absence without pay to a trade union member elected to a paid political post.

207. The ILO Committee of Experts on the Application of Conventions and Recommendations stated in its latest report that Guatemala is among the 40 countries which "have not complied with their obligation to supply reports on ratified Conventions" (International Labour Conference, 79th session 1992, Report III (part 4A), p. 37, para. 111). This Committee of Experts also stated that Guatemala had not replied to the Committee's observations and requests with respect to the implementation of international labour conventions Nos. 1, 10, 62, 63, 81, 96, 100 and 105 (ibid, p. 39, paras. 118-119). Accordingly, the Committee of Experts reiterated its observations and direct requests, emphasizing that "the failure of the Governments concerned to fulfill their obligations considerably hinders the work of the Committee of Experts and that of the Conference Committee..." (ibid, p. 40 para. 121.

208. With regard to Guatemala's application of International Labour Convention No. 105, 1957, concerning the abolition of forced labour, the Committee of Experts noted that no report had been received from the Government and that it must therefore repeat its previous observation with respect to Legislative Decree No. 9 of 10 April 1963, and sections 390, subsection 2, 396, 419 and 430 of the Penal Code. Under this legislation, sentences of imprisonment involving the obligation to work can be imposed as a punishment for expressing certain political opinions, as a measure of labour discipline or for participation in strikes. In the circumstances, the Committee of Experts trusted that the Government would shortly take the necessary steps to bring the national legislation into line with the provisions of Convention No. 105 (ibid, pp. 333 and 334).

209. Furthermore, the Committee on Freedom of Association of the ILO Governing Body continued in 1992 its study of two cases concerning Guatemala; the first one (No. 1,512) originated in a complaint lodged by the International Confederation of Free Trade Unions (ICFTU) concerning death threats, enforced disappearances, torture and violent death suffered by several trade union members (see E/CN.4/1992/5, para. 160). The second (No. 1,539) referred to allegations of repression and intimidation, including the murder and disappearance of trade unionists from the teaching sector and from other organizations (see E/CN.4/1992/5, para. 161). In 1992 the Committee on Freedom of Association considered cases Nos. 1,512 and 1,539 together and formulated interim conclusions and recommendations requesting the Government to keep it informed on the outcome of the judicial inquiries into the murders of José Orlando Pantaleón, José León Segura de la Cruz and Carlos Humberto Rivera. The Committee also requested the Government to inform it whether the dismissed teachers had in fact been reinstated in their jobs and whether they had the possibility of concluding collective agreements. With respect to the other allegations, the Committee asked the Government whether judicial inquiries had been carried out with a view to shedding light on the murders, abductions, arrests and physical attacks against trade union officials and

activists, and to determining responsibility and punishing the guilty parties (284th report of the Committee on Freedom of Association, document GB. 254/6/8, 254th session of the Governing Body, Geneva, 16-19 November 1992, para. 720). The Committee included an annex containing 15 names of trade union officials and activists murdered in 1990 and 1991, 17 cases of assault, abduction or arrest of trade union members, nine cases of death threats made against trade union members, and 14 cases of anti-union discrimination, all in the same period.

210. The Committee on Freedom of Association also considered in 1992 cases Nos. 1,588 and 1,599 concerning complaints against the Government of Guatemala lodged by the Federation of Unions of Bank Employees (FESEB), the International Federation of Commercial, Clerical, Professional and Technical Employees, the Guatemalan Workers' Confederation (CGTG) and the World Confederation of Labour. In this connection, the Committee formulated interim conclusions and recommendations to the effect that the civilian staff working at the Banco del Ejército should enjoy the right to establish and join trade union organizations, and adequate protection against acts of anti-union discrimination. As regards the alleged physical attack on 26 May 1988 against the union's General Secretary, Augusto Mendoza Money, and the threats and harassment of the trade union leaders and legal advisers, the Committee requested the Government to instigate a judicial inquiry and to take the necessary measures to guarantee the safety of the trade union leaders who had been threatened and harassed. Furthermore, the Committee requested detailed information on the many allegations presented regarding anti- union dismissals in various enterprises, the refusal to renegotiate collective agreements, restrictions on the establishment of trade union organizations and the dissolution of trade unions. The Committee requested the Government to reinstate in their jobs the workers dismissed from the municipality of Palín for activities related to the establishment of a trade union. Lastly, the Committee called for a judicial inquiry into the alleged murder of a worker on 5 August 1989 at the La Patria farm, when workers were demanding an end to the mass dismissals (284th report of the Committee on Freedom of Association, document GB. 254/6/8, Geneva, 16-19 November 1992, para. 737).

C. Land use

211. Since the population of Guatemala is ethnically heterogeneous with multi-cultural and multi-ethnic features, the country has a special problem with respect to land use, and 70 per cent of the indigenous population suffers a shortage of workable land. The Human Rights Procurator says that this is due to the "defects in an outmoded agrarian structure unsuited to the needs of the people of Guatemala", and he adds that "it can be seen in practice that in the majority of cases of land grants, the procedure is extremely cumbersome and slow and works against the persons involved, who have a desperate need for land on which to grow their basic food". The Procurator believes that this is a political problem and that no account is taken of the spirit of the Constitution when it speaks of social justice.

212. The Expert has seen no indication that a satisfactory solution is being found for this problem. In fact, the distribution of land between minifundios and latifundios still shows the same imbalance as indicated in his previous report (E/CN.4/1992/5, paras. 171-174). Landholding in Guatemala is still based on a feudal system in which enormous estates exist side by side with

tiny plots. While the latifundios have been able to benefit from the diversification and modernization of the farming sector - with public and private loans - and to concentrate the wealth generated, the productivity of minifundios has fallen, as has their size. In 1990, 83 per cent of indigenous rural families did not have sufficient income to satisfy their basic food needs.

213. On his fifth visit to Guatemala the Expert went to the University auditorium to meet with several hundred peasants from Cajolá (Department of Quetzaltenango). They explained to him that in 1905 the then President of the Republic granted the community of Cajolá about 1,595 hectares of common land (terrenos badldíos) in virgin mountains. Although the titles to the land are duly recorded in the departmental land register, the heirs of Cajolá are unable to use part of the land because the owners of adjacent latifundios claim entitlement to the same strip. On numerous occasions this community has requested the authorities to resolve the situation, even offering to give up part of the land granted to their ancestors. However, no satisfactory response has been made to their claims, which call basically for the resurveying of the adjacent Cuatunco estate in order to delimit the land which they say belongs to them.

214. With regard to their situation in September 1992, the Expert was struck by the extreme poverty of the lives of the group of Cajolá peasants who had found shelter in the USAC auditorium after the National Police had ended their peaceful occupation of the central square on 21 July 1992 (see above, paras. 127-132). The children were undernourished, and the Expert was told that in the past 11 months 20 children had died from malnutrition. Adults and children had to sleep on the floor, practically out in the open, and respiratory ailments were therefore common. Despite the voluntary care provided by a university doctor who visited them regularly, they did not have the proper basic medicines to treat their illnesses. They could not even count on a sufficient supply of water or a minimum amount of food.

215. The Expert is not in a position to pronounce on the validity of the arguments brought forward by either side. However, he feels prompted to state categorically that human lives should not be affected by such a dispute. Although it is certainly difficult for the Government to accept being put under moral and political pressure by a group which seeks to indicate the properly rights it believes to hold, its opposition to those claims should not go so far as to put in jeopardy the life and the physical integrity of the children by refusing any kind of material assistance.

216. Accompanied by the Human Rights Procurator and the Director of the UNDP project for displaced persons, refugees and returnees (PRODERE-Guatemala), on 4 October 1992 the Expert visited the community of Xiul in the municipality of Cunem (Department of El Quiché), where he was received by a large group of indigenous peasants calling for the restoration of land which they said belonged to them. There were 134 families (about 672 persons) which had been displaced in 1982 from their place of origin in Los Cimientos to Xiul, where they were still. The move had been ordered by the army because of the armed conflict going on in the area at the time. In 1985, once the armed conflict there had ended, they requested from the army permission to return to their land in Los Cimientos but they were refused. As far as their present living conditions are concerned, the Expert could see the extreme poverty of the indigenous peasants present there. They said that they had no land in the

place to which they were moved and had to rent land, as well as their modest houses. In order to secure their basic necessities they had to travel at their own expense during the harvest period and work as labourers on estates, managing to save by this means about 200 quetzales after a period of two or three months' work. In the community of Xiul there is a health post manned by a health worker, but no medicines; there is a school with four classrooms and six teachers who provide primary education for the community's children.

217. They said that their original land in Los Cimientos consisted of 63 farms amounting to 29 caballerías and 63 manzanas, which were now occupied by other peasants moved from Chajul by the army. They showed the Expert their title deeds which were duly recorded in the Quetzaltenango land register (Escritura No. 1,909). They also explained that in April 1992 they had brought a legal action for recovery of their lands before the judge of first instance of Santa Cruz del Quiché, using the services of a lawyer in that town to whom they had to pay 3,200 quetzales. They obtained no satisfaction and were even discouraged by the judge himself. Since that legal recourse had failed, they tried to secure some kind of solution from the National Agricultural Processing Institute (INTA), which confirmed their title but told them at the same time that it was not competent to deal with that kind of legal problem.

218. The two land disputes described above, whose negative human consequences the Expert himself had been able to witness and examine, show very clearly that Guatemala lacks, and urgently needs, a system for the peaceful settlement of such disputes. As the bitter experience of the community displaced from Los Cimientos shows, it is almost hopeless to initiate action before the ordinary courts, taking into account the additional part that such proceedings could drag on for years. Because Guatemala does not have a land register covering the whole country and real estate has frequently been assigned to more than one owner, possession, coupled with physical force, tends to become the essential factor in solving land disputes. This state of affairs is highly unsatisfactory and may in the future become another threat to the political stability of the country.

219. In contrast, the Expert had the pleasure of visiting on 5 October 1992, accompanied by the President of the Republic, the Nueva Olga María parcelamiento on the Cuchuacán estate (Department of Retalhuleu). There they were informed that the National Agricultural Processing Institute (INTA) had granted on 12 July 1992 some 575 property titles to as many families at a cost of 1,200 quetzales per family; the beneficiaries were the group of indigenous peasants who in 1991 had taken the leading part in the occupation of the Olga María estate in the municipality of Tiquisate (Department of Escuintla). It will be recalled that the occupants were removed by force by the combined force of the civil protection system (SIPROCI), led by departmental commissioners of the National Police of Escuintla and Sacatepéquez, and that the action led to the death of one of the occupiers, María del Carmen Anavisca Secaida (see E/CN.4/1992/5, paras. 174-177). During the visit to the parcelamiento, the new owners demonstrated their satisfaction with the present situation, although the plot received by each family is relatively small (less than 4 hectares) and must be considered the minimum required to ensure the survival of a family with children.

220. In connection with the visit to the finca Nueva Olga Maria, the President informed the Expert that it was the policy of his Government to distribute, to the greatest extent possible, land to persons wishing to establish themselves

as self-employed farmers instead of performing work as dependent farm labourers. Two strategies were applied in that regard. On the one hand, land owned by the State was divided into small plots and sold to applicants, who could obtain cheap loans from financial institutions of the State. On the other hand, the Government attempted to buy land that was not being actively used by its owners and to distribute it according to the same pattern. In the 20 months of his Government, title to property had thus been awarded to thousands of farmers. In addition, the Government has pledged itself to assist the refugees returning from Mexico either to recover their former possesions or help them to acquire new land, so that their economic existence is ensured (see above, paras 83-105).

221. With regard to the marginalization of the indigenous community and the peasants, the joint pastoral letter of the Bishops of Guatemala "Five Hundred Years spreading the Gospel", which was issued on 15 August 1992, states that "the accumulation of land into a few hands has meant, among other ills, that Guatemala now has at least 231,000 hectares of idle land, to the astonishment and despite the hunger of the thousands of peasants clamouring for a plot. We believe that, unless urgent priority is given to the agrarian problem, every day will see more frequent invasions of land, and a larger influx of peasants to the capital to swell the ranks of the destitute, and every day violence will claim a larger number of victims...". For the Mayan peoples, "the earth, and the land in its various manifestations (mountains, ravines, volcanos, rivers, lakes, villages), is not primarily a source of production and profits, or a provider for the market economy, but a sacred place. It is the mother which gives us life".

D. Right to health

222. The Human Rights Procurator himself notes in his report "The First Constitutional Period 1986-1992" that "Guatemala is one of the Latin American countries with the lowest levels of welfare and satisfaction of its people's basic needs. The social profile has deteriorated in recent years owing to the country's economic crisis which has eroded the purchasing power and quality of life of Guatemalans". The Ministry of Public Health covers only 25 per cent of the population; the Guatemalan Social Security Institute (IGSS) covers 15 per cent, and the private sector 14 per cent. The total cover is thus 54 per cent of the population, concentrated exclusively in urban areas. This means that the remaining 46 per cent (i.e. 4.5 million people) is not provided with any kind of health service, not even a defective one. Most of these people are rural and indigenous.

223. In addition to these structural shortcomings, it must be pointed out that, according to an official estimate, the installations in 70 per cent of the country's 35 main hospitals are in a state of disrepair; many of them have already reached the end of their useful life. Basic equipment such as boilers, laundries, electricity plant, lifts, etc., are in a state of deterioration and in 45 per cent of the hospitals the support services such as radiology, laboratories, blood banks and sterilization facilities are described as "60 per cent in poor condition".

224. In his written opinion of 9 April 1992 concerning the operating conditions in the Escuintla regional hospital, the Human Rights Procurator stated that "the investigations carried out have shown that this hospital is in a very poor state which makes it difficult to operate normally, to the

detriment of the population of the region which it serves, who are denied the right to health or can exercise it only in precarious conditions which actually endanger their health. For example, the hospital does not have drinking water in its various services, and there is insufficient medical and nursing staff to care for all the cholera patients, who do not even have bedpans." This opinion blames the Government for violating the right to health, "as it lacks the will to apply the health policies", the Ministry of Public Health and Social Assistance "for its plain inability to carry out these policies effectively", and the former director of the hospital "for his poor management".

225. In contrast, the Expert visited on 5 October 1992, accompanied by the President of the Republic, the facilities of what will be the new departmental hospital of Huehuetenango, to be opened in March 1993 in the departmental capital. The hospital is of modern design and will have a capacity of 172 beds; its final cost, including equipment, is estimated at about 20 million United States dollars. However, the hospital will have to cater to the needs of a very large population (about 80,000 in the town and 600,000 in the department).

226. All these factors explain why the infant mortality rate remains high. Current data indicate that about 100 children die every day in Guatemala, most of them from hunger and causes connected with malnutrition, and that 58 per cent of Guatemalan children aged between 3 and 36 months suffer from some degree of malnutrition; this figure rises to 72 per cent in rural and poor areas.

227. The Government has undertaken to eradicate neonatal tetanus by 1995, to eliminate the indigenous transmission of the measles virus by 1997, to eradicate poliomyelitis, and to keep the other immuno-preventable diseases under control. But the Ministry of Public Health stressed that until all the municipalities of the country are effectively covered, epidemics may break out.

228. The Human Rights Commission of Guatemala (CDHG) reported to the United Nations Subcommission on Prevention of Discrimination and Protection of Minorities in July 1992 about the defects in health services in rural areas, where there is only one doctor for every 25,000 inhabitants, and the shortages in the main State hospitals. According to this non-governmental organization, which has its headquarters in Mexico, statistics produced by several specialized bodies indicate that 80 per cent of the rural population does not have access to medical services. It adds that 68 per cent of health personnel works in hospitals, 25 per cent in health centres, and 7 per cent in rural communities; 45 per cent of the doctors live in the capital, where 20 per cent of the total population is concentrated.

229. According to the assessment of the Human Rights Procurator, "the health problems can be summed up as excessive bureaucratization, duplication of effort, waste of resources and bad management, and lack of transparency in budgetary spending in this sector, for corruption levels have been extremely high since the 1980s, and corruption has continued although at a different level".

E. Right to education and culture

230. Guatemala occupies second place among the Latin American countries with the highest illiteracy rates. In rural areas, 70 of every 100 inhabitants are illiterate, while in urban areas the rate is under 30 per cent, according to official figures. These indicators are worse among the indigenous population, with an illiteracy rate of 76 per cent in the Ixil region and in the north of the departments of El Quiché and Alta Verapaz. According to the latest data, in 1991 the school system provided 17 per cent cover at the preprimary level, although only 3.5 per cent included bilingual teaching, and 71.6 per cent cover at the primary level. The cover at the secondary level was 17.6 per cent. It is estimated that only 16 out of every 100 children aged five and six attended preprimary school, leaving 84 out of every 100 without provision, a situation which is worse in the rural areas, where no bilingual preprimary education was available to 96 per cent of the children, according to figures in the report of the Human Rights Procurator.

231. The Minister of Education informed the Expert about the establishment of 5,000 new teacher posts in 1992, although the deficit is still 17,000 posts for the whole country. Teachers' pay has been increased from 340 to 900 quetzales a month. As a result, it has been possible to reduce by 10 per cent the number of children abandoning school and secure an increase in the attendance levels. A further effort has been made to establish the first bilingual schools for children aged five and six, and there are already 60 bilingual teachers qualified in the four main vernacular languages. The Minister's aim is to achieve 100 per cent school attendance by preprimary and primary children by 2000.

232. The Human Rights Commission of Guatemala (CDHG) reported that almost 50 per cent of children under 18 receive no formal education, thus swelling the ranks of the illiterate, which are concentrated in the departments of Alta Verapaz (86.4 per cent), El Quiché (84.6 per cent), Sololá (79.5 per cent), Huehuetenango (75.5 per cent), and San Marcos (60.5 per cent); almost all these departments have a high concentration of indigenous population. In terms of education deficit, 74 per cent of children of nursery school age are not provided for, at the primary level 42 per cent of the children aged 7 to 14 are not provided for, and at the secondary level the deficit is 84 per cent. Other figures indicate that only 13 per cent of Guatemalans aged over 15 have completed primary education, 44 per cent have completed no grades, 7.9 per cent attend secondary school, and only 2 per cent go to university. According to CDHG, this is due to the shortage of schools, which are concentrated in the capital (33 per cent of primary schools, 61 per cent of secondary schools, and 90 per cent of the university places), despite the fact that only 25 per cent of the students live in Guatemala City. There is therefore discrimination in the access to education in general; and higher education has virtually no students of indigenous origin. CDHG concludes therefore that "the present education policy maintains a system of elitist, exclusive, alienated and alienating education".

233. In his written opinion of 11 May 1992 concerning the participation of students of the National Central Institute in street demonstrations to draw attention to their educational grievances, the Human Rights Procurator stated that "education is an inherent right of human beings, and the students' demands are therefore just; the Ministry of Education has been negligent in seeking answers to the students' complaints". The Procurator recommended that

the competent authorities should pay due attention to what the students are saying and take appropriate action to solve swiftly the various problems of the education system.

F. Right to a healthy environment

234. Although Guatemala has one of the richest biodiversities in the American continent, its ecology is being threatened by accelerated environmental degradation which manifests itself in a number of problems such as the loss of forestry resources (according to figures of the Human Rights Procurator, the current rate of deforestation is 400 and the rate of reforestation only 18 square kilometres a year), degradation of the land, destruction of coastal resources, disappearance of indigenous plant and animal species of the region, and pollution of the air, soil and water by a local industry which does not have the necessary facilities to remove and treat its wastes. With regard to the trade in toxic wastes and pollutants, there have been protests against the Government's intention to install in the Guatemala plants for the incineration of used-tire wastes and for the recycling of dangerous domestic, industrial, farm and animal wastes imported from other countries. Such activities cause extremely toxic emissions which endanger public health and natural resources. The two projects have been submitted by the Guatemalan companies Energía y Recursos S.A. and Industria de Recuperación Ecológica, and they are said to have administrative authorization. Given this situation, congressman Mario de la Cruz Torres, chairman of the Congressional Health Commission, denounced the attempts to bribe civil servants to authorize the entry of toxic wastes from other countries.

235. On 29 September 1992 more than 130 families living in the communities of Cayo Quemado, Cayo Grande, La Esperanza, Lo de Sanabria, Lámpara, Barra de Lámpara, Tamja, Rio Tatín, Barra de Tatín, La Pedrera and La Pintada, located on the banks of the Río Dulce (Department of Izabal) reported the existence of a "master plan for a national park" promoted by the Government of Guatemala and private enterprises which will entail the displacement of a thousand peasants from the Río Dulce area. According to the peasants affected, their representatives were not invited to take part in the drafting of the plan, which envisages the construction of tourist facilities on the land which the peasants have occupied for several decades. The official objectives of the Río Dulce national park are to preserve a sample of the ecosystem of the tropical rain forest, to maintain the potential of the natural, cultural and scenic resources, and to protect the habitat of the plant and animal species of the area...". The mayor of the municipality of Livingston, in the area affected by the plan, informed the President of the Republic on 28 September 1992 that his municipality "did not participate in the study approved in July 1992 for the development of the Río Dulce area in Livingston" and stated his objection to the plan. On 15 October 1992 the Expert sent to the Chairman of the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH) a letter requesting information about the situation of the local people concerned, for if the Río Dulce project was carried out they would be displaced from the land where they have lived for more than 60 years. To date, no reply has been received from the Government.

V. CONCLUSIONS AND RECOMMENDATIONS

236. As in the two preceding years, the Expert wishes to express his sincere gratitude to the Government of Guatemala for its willingness to cooperate with him. No obstacles or restrictions were placed in his way. He could freely travel to all parts of the country he wanted to visit and talk without any hindrance to persons from all walks of life. The President himself spent a whole day with him, showing him a number of social institutions designed to benefit the least favoured persons of Guatemalan society. On that occasion, the Expert had the opportunity to raise with the President many of the issues dealt with in the present report.

Guatemalan society and the Nobel Peace Prize

237. One of the most outstanding events of 1992 was the award of the Nobel Peace Prize to Rigoberta Menchú Tum, a fighter for the human rights of indigenous peoples. This recognition of her work by the international community underlines the importance of indigenous peoples in countries where, although forming the majority of the population, as in Guatemala, they have suffered centuries-long discrimination by the authorities. In this connection Rigoberta Menchú stated in the Third Committee of the General Assembly on 17 November 1992 that her role as the new Nobel Laureate "... is to be a force for peace and the human rights of indigenous peoples", in the sense that "the internal armed conflict in my country and in other countries of the world has its causes, and it is only by dealing with these structural and historical causes that the conflict itself will be resolved politically".

Overall governmental policies in the field of human rights

238. One of the major merits of the policies inaugurated by President Serrano is his unequivocal commitment to the peace process through negotiations with the URNG. The problem remains how a policy of respect for human rights and fundamental freedoms can be made the unmistakable hallmark of governmental policies at all levels. It is still doubtful whether the President has in that regard the unconditional support of the entire governmental machinery. No great strides ahead which would permit the elimination of this situation of structural tension can be expected in the near future.

Public insecurity

239. The general climate of violence still remains one of the dominant features of Guatemala. Public authorities have not been able to effectively stem the wave of crimes against the life and physical integrity of individuals from almost all social sectors. However, the indigenous communities in the rural areas seem to be the group most affected. In most cases, it is extremely difficult to determine whether an offence should be categorized as being committed by common criminals or whether there has been involvement of the security forces of the State. All observers, among whom the most reliable source is the Human Rights Procurator, agree that many attacks on the life and physical integrity of individuals are in fact to be attributed to these forces, including the civilian self-defence patrols. On the other hand, the number of such crimes at the hands of security agents shows a significant decrease according to the statistics available for the first six months of 1992. However, it should be pointed out that the well-known pattern of

extrajudicial executions persists: the targeted victims during 1992 were university professors and students, human rights defenders including union leaders, political leaders and members of the Catholic Church.

240. The civilian authorities continued their efforts directed towards making the rule of law the effective guiding principle of every state agent. However, the Expert is not aware that the recommendations contained in paragraph 188 of his last report (E/CN.4/1992/5), to the effect that the reliability of every member of the security forces should be checked one by one and that, in order to create conditions of transparency, the organigrams of the national police and the armed forces should be made accessible to members of the public, have been heeded. He hereby formally renews this suggestion.

Machinery for the prevention and repression of crime - the National Police

241. The National Police of Guatemala has not yet been able significantly to alter its profile of low effectiveness. The reopening of the Police Academy as well as some improvements of the salary structure may pave the way for a higher degree of professionalization tantamount to an increase in investigative power. Changes at the head of the National Police as well as in the post of the Minister of the Interior demonstrate the enormous difficulties experienced in trying to reorganize the police forces and raise their level of performance. As an emergency measure to counter a wave of violent crime in the capital in the spring of 1992, the task force "Hunapú", made up of elements of the National Police, the Policia Militar Ambulante and the Guardia de Hacienda, was established with the aim of patrolling the streets of Guatemala city. This task force again links the National Police closely with the armed forces. Although its creation, like that of the Sistema de Protección Civil (SIPROCI), may have been justified during a momentany crisis situation which seemed to overwhelm the capacity of the National Police, "Hunapú", together with SIPROCI, should again be dissolved at the earliest time. The existence of such special task forces creates the unfortunate and erroneous impression that even outside zones of armed conflict public order cannot be maintained without the assistance of the armed forces. Accordingly, the recommendation of the Expert to create a specialized unit within the National Police, to be entrusted with the investigation of all cases of enforced disappearance, extrajudicial killings and other political crimes, is now renewed and emphasized.

242. Efforts to make the National Police a professional instrument for the prevention and repression of crime and a disciplined body of the State which enjoys the confidence of all citizens must be continued and intensified. It should be the aim of the police authorities to attract candidates with a good level of education. Moreover, a strict organizational separation between the armed forces and the National Police should be established. In particular, the different police departments should be headed by civilians instead of military officers. The general intelligence services for matters other than those strictly of a military character should be under the National Police. Therefore, the present competences of the Servicio de Inteligencia Militar (G-2) should be reviewed to meet democratic standards. This approach should also be adopted by the Executive branch in order to replace what is now the Estado Mayor Presidencial by a civilian body composed of advisers to the President of the Republic.

Machinery for the prevention and repression of crime - prosecutorial authorities and judicial system

243. The machinery for the prevention and repression of crime is still largely ineffective. In most cases of offences against the life and physical integrity of human beings, it is impossible to collect sufficient evidence to bring an indictment against any presumed perpetrators. If a person is put on trial, proceedings normally advance slowly and often end with an acquittal for lack of evidence so that the commission of the crime remains without any sanction. It has again been reported that judges are put under pressure in connection with trials under their jurisdiction. The Public Procurator's office has appealed all of the judgements which to the outsider seemed to be marred by a hardly understandable leniency. In mid-November 1992, the final decision is still outstanding in many cases that are likely to shed a clear light on the ability of the judicial system of Guatemala effectively and objectively to deal with cases having a political background.

244. The recommendation made by the Expert (E/CN.4/1992/5, para. 190) to adopt the new Code of Criminal Procedure as a matter of urgency was heeded by the National Congress. The new Code will enter into force in September 1993, after a transitional period of one year. The new President of the Supreme Court has elaborated far-reaching plans to monitor the activities of judges, which again correspond to some extent to a recommendation by the Expert. It should be stressed, however, that efforts to prevent abuses of judicial independance must not impair and undermine that independance. While general examination of every single judicial act would simply appear to be excessive, swift action should be possible in instances where there exist clear indications that a judge has made use of the powers of his office in an irregular manner.

245. The extension of the military jurisdiction is excessive and is a blatant obstacle to the proper conduct of the legal proceedings in which members of the armed forces are accused of serious violations of human rights. In a democratic society the military jurisdiction is reserved exclusively for offences of a military nature committed by servicemen against servicemen. Apart from such cases, jurisdictional competence should rest with the ordinary courts of justice.

246. As far as the Public Prosecutor's office is concerned, the Expert urges the Government, in particular President Serrano, upon whom the Constitution confers direct responsibility (art. 252), to do everything in its power to ensure the effectiveness of the institution during the absence of its head officer, the Procurador General de la Nación. The National Congress should complete its consideration of the draft law on the Public Prosecutor's office as soon as possible in order to ensure that the new Code of Criminal Procedure may become effective in 1993 as currently planned.

The Human Rights Procurator

247. The Human Rights Procurator and his deputies in 1992 once again confirmed their well-deserved reputation as public officers committed in total independence and impartiality to the cause of human rights. Care will have to be taken that all collaborators, in particular the heads of the subsidiary offices in the Departments, are all inspired by the same spirit of attachment to the rule of law and show a similar firmness in denouncing attacks against the basic rights of individuals.

248. Taking into account the marginalized situation of the indigenous populations in Guatemala, the Human Rights Procurator should considerer the strengthening of his office by the creation of a department dealing specifically with indigenous issues.

249. The activities of the Human Rights Procurator deserve the full support of the National Congress and the international community.

Other institutions for the promotion and protection of Human Rights

250. The Presidential Coordinating Commission on Executive Policy in the Field of Human Rights (COPREDEH) received the necessary financial and human resources and became fully operational in the course of 1992. It serves, in particular, as a useful documentation centre for the Government with regard to all issues directly concerning human rights.

251. Withing this context, COPREDEH should be the focal point of the Government to coordinate its efforts to comply with the international obligations contracted by Guatemala in the field of human rights. In particular, COPREDEH should inter alia: (i) coordinate the preparation of periodic reports under United Nations human rights conventions and, bearing in mind the recommendations of the Commission on Human Rights in its resolution 1992/54 on national institutions, to involve in such preparation the Human Rights Procurator and other interested organizations and make the national reports available to the general public; (ii) coordinate the preparation of replies to the United Nations extraconventional special procedures; (iii) promote the ratification of international human rights instruments such as the two Optional Protocols to the International Covenant on Civil and Political Rights, ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries; and to accept the declarations under article 22 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 14 of the Convention on the Elimination of All Forms of Racial Discrimination; (iv) review with the National Police and the armed forces all manuals used for training their personnel in order to ascertain whether these manuals take account of the generally accepted United Nations standards; (v) review the Military Code, Second Part (Code of Criminal Procedure) to comply with the requirements of the International Covenant on Civil and Political Rights; (vi) review domestic legislation to comply with the international human rights standards, in particular those of the International Covenant on Civil and Political Rights.

The armed forces

252. The Minister of Defence has on many occasions emphasized the unreserved loyalty of the armed forces to the democratically elected Government. Although many sources report strong tensions among top-rank military leaders, the armed forces have manifested that loyalty, in particular by fully and unreservedly participating in the peace negotiations with the URNG. The strategies employed by the armed forces in their fight against the guerrilla units still do not correspond to elementary rules on warfare since indiscriminate bombing and shelling of targets which are not strictly military ones continue.

253. There are still widespread allegations, based on solide evidence, that some elements of the armed forces are involved in attacks on the life and

physical integrity of other citizens. The draft system has slightly improved, but is still marred by irregularities and discrimination to the detriment of the indigenous population.

254. It must be stressed once again that the armed forces need clear combat rules directing their units not to harm the civilian population in the disputed zones. A profound revision of the strategies employed appears all the more necessary since a large part of the refugees returning from Mexico intend to settle in the Ixcán area. The armed forces should generally follow the rules laid down in Additional Protocol II to the Geneva Conventions of 12 August 1949, as provisionally agreed in the peace negotiations with the URNG.

255. The draft bill on military and social service which has been elaborated in accordance with a corresponding recommendation of the Expert (E/CN.4/1992/5, para. 204) should be enacted by the National Congress as soon as possible. During the consideration of the bill, every effort should be made to ensure that none of its provisions contains regulatory elements which may turn out to legitimize.discriminatory treatment to the detriment of members of indigenous communities.

256. Control mechanisms permitting the monitoring of compliance by the armed forces with their obligations under the Constitution and the laws of Guatemala are largely lacking. There is no public accountability. Rather, the armed forces still act to a large extent as a closed society. In particular, little preparedness exists to cooperate in investigating serious crimes attributed to members of the military. Thus, in the Estado Mayor Presidencial no disciplinary inquiry was initiated when it emerged that an officer of that unit was charged by the Public Prosecutor's office with being one of the murderers of the sociologist Myrna Mack. The armed forces must radically change their practices in that regard in order to restore military honour and to establish their legitimacy in a democratic society by winning the confidence of all Guatemalans.

Civilian self-defence patrols

257. In most rural areas where civilian self-defence patrols and military commissioners exist, pressure is being exerted on the local population to join the ranks of the patrols in contravention of article 34 of the Constitution. The patrols and the military commissioners are responsible for many acts of violence against persons who disagree with their philosophy of unconditional warfare against any kind of "subversion". Additionally, they tend to undermine the authority of the civilian authorities at the local level. The Expert, while maintaining the recommendations contained in paragraph 193 of the previous report (E/CN.4/1992/5), welcomes the provisional agreement reached between the Government and the URNG and emphasizes that this agreement should be considered a first step for the definitive abolition of the patrols.

The guerilla forces

258. As in previous years, the Human Rights Procurator attributes a considerable number of violent attacks against civilians to the guerrilla forces. Like the armed forces, the guerrilla units should abide by the rules of warfare contained in Additional Protocol II to the Geneva Conventions of 12 August 1949. The guerrilla forces continued in 1992 their strategy of

blowing up bridges and electric power lines. No justification can be found for such destruction, which harms the people of Guatemala. The guerrilla forces should desist forthwith from any activities which are capable of jeopardizing the rights of the large majority of Guatemalans who are not involved in the armed conflict.

Freedom of expression

259. Although Guatemala continues to enjoy a remarkably high degree of freedom of expression, there exists a fatal tendency in Guatemalan society, including holders of public office, to stigmatize any views containing fundamental criticisms of governmental policies as "subversive", in particular if such criticisms coincide with positions defended by the URNG. As a consequence of this attitude, once again a number of journalists were physically attacked and received death threats.

260. Everyone must realize that freedom of opinion means first and foremost freedom to criticize. Of course, journalists in particular are required to report objectively and truthfully. But to inform the public about events that have actually happened, to analyse the background of these events and to articulate views as to the lessons to be drawn from the events is the right of everyone and constitutes a professional duty for every journalist. The fight against impunity, if pursued forcefully and with determination, would at the same time strengthen freedom of expression, which is one of the cornerstones of a democratic society.

Freedom of association

261. The present system for the conferral of juridical personality on groups wishing to establish themselves as associations is unsatisfactory. It allows judgments to be made on political grounds and is flawed by excessive procedural delays in a manner inconsistent with freedom of association as a fundamental right of every citizen.

262. Human rights organizations, which have become an essential feature of Guatemalan society under the democratic Constitution of 1985, have not yet been fully accepted by the Government as legimitate groups acting as an opposition not only to the Government, but also to the other political forces represented in the National Congress. Assaults and threats against members of these groups have not stopped in 1992. Criminal charges brought against the leader of CERJ (Council of Ethnic Communities Runujel Junam) for alleged smuggling of arms to the guerrilla forces appear highly implausible to the outside observer. The prevailing situation raises all the more concerns since many of the human rights organizations were set up by members of the indigenous communities.

Freedom of correspondence and communication

263. According to widespread allegations, the security forces of the State have established a system for the control and opening of mail and the tapping of telephones. There is no law permitting such activities which would, if proved, constitute a serious violation of the fundamental rights of all Guatemalan citizens. The Government should look into the matter and submit a detailed report to the National Congress.

Economic and social rights

264. The situation of social and economic rights remains precarious in Guatemala. The deficiencies signalled in last year's report (E/CN.4/1992/5, paras. 153-170, 195) remain largely unchanged. Although Guatemala is still an economically weak country and a tradition of social neglect that has continued for decades cannot be remedied at once, the State of Guatemala has a direct responsibility in a number of areas. Greater efforts should be undertaken in the field of health care. Within a relatively short time-span, every child should be provided with essential basic needs, in particular food, health care, shelter and the opportunity to attend at least primary school. The present policies can be acknowledged as a first step in the right direction. But more drastic shifts in the budget of the nation are needed in order to satisfy all legitimate needs. A greater percentage of public spending should be devoted to the rural areas. The National Congress, in particular, is called upon to promote understanding for a greater degree of national solidarity and to shape its budget policies accordingly.

265. No real progress can be observed as far as the enforcement of minimum living standards is concerned. Unfortunately, some foreign investors, in particular in the textile industry, exploit the weak economic situation of Guatemala in an unscrupulous manner by threatening to close their factories if public control mechanisms should attempt to penalize them for breaches of the law in force.

Indigenous population

266. Through the award of the 1992 Nobel Peace Prize to Rigoberta Menchú, the whole of Guatemalan society has become aware of the unique position of Guatemala in Central America. The Nobel Prize citation itself emphasized that "the recognition of ethnic plurality and cultural diversity are keys to enabling countries such as Guatemala to define their true character as nations. The recognition of indigenous peoples as forming a majority in society is one of the starting points for recognition and respect of such profound values as the conception of the world, language, the forms of social organization, mankind's relationship with nature and, in short, his history". Nearly 70 per cent of the population are members of indigenous communities. In the political life of the nation, however, the indigenous people play only a modest role. In the National Congress, only 10 to 15 per cent of the deputies are of indigenous origin. A sign of a new constructive spirit is that the National Congress is considering the approval of the ratification of the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

267. In the years to come, Guatemala will have to make a considerable effort to integrate the indigenous communities more closely into the life of the nation in the manner in which those communities themselves see fit. Bilingual education in Spanish as well as in the vernacular languages, already begun in some areas, should be intensified. It should also be stressed again that the Government and the society of Guatemala must accept the human rights organizations which, precisely because they articulate specific indigenous concerns, were in the past regarded with a high degree of mistrust. If the provisions of the Constitution (articles 66 to 70), as well as ILO Convention No. 169, are faithfully implemented, the current concerns of the indigenous communities will largely be met.

268. The Expert renews his recommendation (E/CN.4/1992/5, para. 198), which so far has gone unheeded, that a Ministry for Indigenous Affairs be established. At the same time, he wishes to state his satisfaction that the work on a law implementing the principles enshrined in the Constitution on indigenous communities has again been taken up with the services provided by Mr. A. Willemsen Díaz, a consultant of the United Nations Centre for Human Rights.

The democratic process

269. It is gratifying to note that the National Congress and the Government, both entrusted with a mandate by the electorate in 1990, have been able to discharge their constitutional reponsibilities without any hindrance. On the other hand, in order to be fully effective, the democratic process requires full participation by all citizens without any discrimination. It is a fact that the indigenous communities are still to a great extent outside that process, hampered by their lack of education in articulating their needs and often unable, because of the deficient means of communication, to understand what is going on in the capital.

270. The Expert renews the recommendations contained in last year's report (E/CN.4/1992/5, para. 200). He insists, in particular, on the need to get rid of the highly pernicious concept of "subversion" in political struggles of an ideological nature. No one should be stigmatized as a foe of the national community as long as he is prepared to respect the rights of his fellow citizens. The Government is of course fully entitled to defend the positions which it considers best suited to the common interest of the nation. But it must accept that other political groups have a similar right to hold that governmental policies should take a different direction.

The negotiating process between the Government and the URNG

271. The negotiating process, although still focused on the first point of the agreed agenda, namely human rights, has made considerable progress in 1992. The two sides disagree only on the nature and the starting date of the verification system concerning the future agreement of human rights.

272. The armed conflict has already lasted too long. The loss of human lives and the material damages entailed by it are a heavy burden which has poisonous repercussions in all fields of social life. The Expert had hoped that the agenda of the peace negotiations could be disposed of by the end of 1992, an expectation which has not materialized. He urges both sides to complete their work early in 1993. If the negotiations were to drag on beyond 1993, they would definitively lose any momentum and both sides would be harmed equally; any chance that a peace agreement could be concluded before the end of the term of office of President Serrano would be lost. Both sides must be reminded of their responsibilities vis-à-vis the people of Guatemala, which have just one desire, namely to live in peace. It is the people of Guatemala who are the great losers if no compromise solution is reached.

Refugees and displaced persons

273. The conclusion of an agreement on the return of the refugees living in Mexico, which took place on 8 October 1992 between the permanent commissions of refugees and CEAR, the body entrusted in the Government of Guatemala with

the relevant responsibilities, can be seen as a first step in a long-term process of normalization, made possible by the existence of a democratically elected Government in Guatemala. The agreement sets forth important guarantees to the benefit of the returnees. In particular, they have received firm assurances that they will not have to serve in the civilian self-defence patrols; that, on account of the heavy burden which building a new existence entails, they are exempted from military service for a duration of three years; and that the Government will assist them in recovering their former possessions or acquiring new land.

274. A carefully balanced verification mechanism, which includes the Expert, will ensure that the agreement is dutifully complied with. Under the new verification mechanism, the Expert would be assisted in the field by an official of the Centre for Human Rights who, as a delegate of the Expert, would monitor the fulfilment of the conditions stipulated in the agreement and report to the Expert, who would present his reports to the Commission on Human Rights. In this context it is essential that the Commission takes the appropriate action so that funds are made available for the financing of the Expert's delegate to be posted in Guatemala on a permanent basis during the period of repatriation of the Guatemalan refugees from Mexico.

275. The Expert appeals to both sides to implement the agreement in good faith in order to make it a model for future arrangements that should emerge from the peace process. The agreement should not be considered a political "victory" by either party. Any such interpretation could have disturbing negative repercussions.

276. The situation of the "Comunidades de Población en Resistencia" (CPR) in the areas affected by the armed conflict has not significantly improved in 1992. They are still largely cut off from contacts with the rest of the country, although they have been able to establish an office in the capital. The State of Guatemala is required to treat the members of those communities like all other Guatemalan citizens. On the other hand, the CPR must accept that the areas in which they live are an integral part of the territory of Guatemala, not subject to any special status. It is deplorable that they imperilled the health of their children by not permitting a vaccination campaign prepared by the International Committee of the Red Cross to be carried out, simply because the Government insisted that the medical team be accompanied by an employee of the Ministry of Public Health.

277. The Expert urges both sides to reconsider their positions and to normalize the situation in the relevant areas. It is clear that the armed forces bear a particularly heavy responsibility in this regard. If they continue to treat the CPR with suspicion, equating them with the guerilla forces, the anomalous situation as it exists today cannot be overcome.

Further action by the Commission on Human Rights

278. The Expert has noted many positive elements in the reports; on the other hand, numerous negative elements cannot be overlooked either. Under these circumstances, he feels that the human rights situation in Guatemala requires essentially a political assessment which can only be made by a political body. Consequently, he confirms his earlier recommendation, suggesting that Guatemala's human rights record should continue to be observed by the Commission on Human Rights, leaving the appropriate method of observation to the discretion of the Commission.

VI. FINAL OBSERVATIONS

279. Progress towards ending the armed conflict has been slow, albeit real and tangible, in 1992. It has been said many times and remains true that human rights can flourish only under conditions of peace. The main obstacle impeding swift progress in the negotiations between the Government and the URNG is mutual distrust. The Government fears that by making too many concessions it could destabilize the country. The URNG, for its part, is haunted by the fear that any pledges made by the Government could reveal themselves very quickly to be mere paper constructions, lacking any real substance. Thus, a deliberate effort at mutual confidence building, which needs no contractual basis, should accompany the negotiating process.

280. As pointed out elsewhere in this report, the URNG should forthwith desist from attacking and destroying elements of the social infrastructure of the country. It could thus demonstrate that the common interest of the nation is its primary objective. The Government, on its part, should rid itself of the fears and anxieties of a past where the cold war may have posed a real threat of foreign domination through groups inspired by a worldwide ideology alien to Guatemala. In order to prevent any sympathies for "leftist" ideas from taking root, even the mere expression of opinions that did not conform to a canon of conservative orthodoxy was made subject to prosecution and persecution. Under a democratic constitution, which sets forth freedom of expression and political equality of all citizens, such practices must be definitively abandoned. Times have changed. Guatemala finds itself today in a different international context. The simple fact is that views are now being voiced which for decades could not be articulated on the national soil. This is not the price, but the fruit of freedom. Only by permitting everyone to avail himself freely of all the rights that are the normal prerogatives of a citizen in a genuinely democratic country can Guatemala hope to accomplish modernization and raise its level of development in all fields.

281. Full and unreserved recognition of the equal rights of all citizens is the core element of a process of mutual confidence building. It requires tolerance not only of all actors in the political arena, but of every single citizen. The ugly concept of subversion must be renounced once and for all because it encompasses in a pernicious fashion attacks on the basic political philosophy of a liberal State, namely recourse to violent means, and advocacy of political ideas by canvassing in a peaceful manner strategies alternative to those pursued by the Government. Guatemala must accept the challenge of such alternative blueprints for its society. If the leading elites opt for suppressing the free competition of ideas, they risk imperilling the long-term stability of the country. The Expert trusts that all parties involved - the social organizations, the political parties, the indigenous communities, the National Congress, the Government and the URNG - are aware of the basic truth that Guatemala is the homeland of all of them and that mechanisms for the peaceful vindication and coordination of their rights and interests must be found if the nation as a whole is to live in human dignity.

Annex

PROGRAMME OF WORK OF THE EXPERT DURING HIS FIFTH VISIT TO GUATEMALA
(including activities in New York and Mexico)

Date	Places visited and persons interviewed
20/9/1992	New York
	Mr. Gónzalo Menéndez Park, Minister for Foreign Affairs of Guatemala
	Mr. Jean Arnault, Observer of the Secretary-General in the peace negotiations
	Representatives of the following international non-governmental organizations:
	Americas Watch
	Lawyers' Committee for Human Rights
	Amnesty International
27/9/1992	Guatemala City
	Dr. Alfonso Fuentes Soria, Rector of the University of San Carlos and other members of the University Board of Governors
	Mr. Amílcar Méndez, coordinator of the Ranujel Junam Ethnic Communities Council (CERJ) together with eight members of the organization
	Mr. Factor Méndez, Director of the Centre for Human Rights Research, Study and Promotion (CIEPRODH) together with three members of the organization
	Joint meeting with the following international officials accredited to Guatemala: UNDP Resident Representative; representative of the Office of the United Nations High Commissioner for Refugees (UNHCR); Director of the UNDP project for displaced persons, refugees and repatriated persons (PRODERE-Guatemala); and representative of the United Nations Children's Fund (UNICEF)

Date	Places visited and persons interviewed
28/9/1992	Monsignor Próspero Penados del Barrio, Metropolitan Archbishop of Guatemala
	Mr. Ronald Ochaeta, head of the Human Rights Office of the Archdiocese of Guatemala
	Visit, in the auditorium of the University of San Carlos, with peasants from the village of Cajolá (Department of Quetzaltenango) who had taken refuge there
	Meeting in the University with residents of the village of Guineales, municipality of Santa Caterina de Ixtahuacán (Department of Sololá)
	Visit to the headquarters of the Casa Alianza street children's shelter
	Mr. Juan León Alvarado and three other representatives of the Mayan coordinating committee "Nuevo Amanecer" (MAHAWIL Q'IJ)
	Joint meeting with representatives of the following non-governmental organizations:
	Relatives of Detained/Disappeared Persons of Guatemala (FAMDEGUA)
	Association of University Students (AEU)
	Mutual Support Group (GAM)
	International Peace Brigades (BPI)
	Confederation of Religious Orders of Guatemala (CONFREGUA)
	Union of National Electricity Board Workers (STINDE)
	National Federation of State Workers of Guatemala (FENASTEG)
	Peasant Unity Committee (CUC)
	Mr. Gunther M/ssing, head of mission of the International Organization for Migrations (IOM)
	Mr. Geremías Sosa y Sosa
29/9/1992	Mr. Rubén Darío Ventura, defence lawyer of the soldier Nicolás Gutiérrez Cruz
	Mrs. Clara de Arenas, Director of the Institute for the Advancement of the Social Sciences (AVANCSO)
	Mr. Thomas Strook, Ambassador of the United States to Guatemala
	Mr. Leopoldo Guerra, President of the Judges' and Magistrates' Association of the Judiciary

Date	Places visited and persons interviewed
	Mr. Juan José Rodil Peralta, President of the Supreme Court of Justice
	Mr. Ramiro de León Carpio, Human Rights Procurator of Guatemala together with members of his staff
30/9/1992	Dr. Jorge Mario García Laguardia, President of the Court of Constitutionality
	Mr. Oliverio García Rodas, Chairman of the Congressional Human Rights Commission
	Mr. Pedro Gómez Chaves, Vice-Chairman, and three other members of the Congressional Indigenous Communities Commission
	Mr. Edmond Mulet Lessieur, President of the Congress of the Republic
	Colonel Otto Pérez Molina, head of Military Intelligence
	Mr. Bernardo Neumann, Chairman, and members of the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH)
	Six members of the Runujel Junam Ethnic Communities Council (CERJ)
	Six representatives in Guatemala City of the Communities in Resistance (CPR) of La Sierra and El Ixcán (Department of El Quiché)
	Members of the Workers' Union of the former National Housing Bank (BANVI)
	A magistrate from the jurisdiction of Antigua, Guatemala
	Press conference with information media
	Four representatives of the "forensic anthropology team" of Guatemala
	Miss Patricia Fuller, First Secretary of the Embassy of Canada and member of the International Returnees Support Group (GRICAR)
1/10/1992	Mr. José María Meléndez, Director-General of the National Police
	Colonel Luis Felipez Miranda, Commander of the Military Police Flying Squad (PMA)
	Colonel Otto Aragón Menéndez, Commander of the "Hunapú" combined forces
	Mr. Acisclo Valladares Molina, Public Prosecutor
	Joint meeting with:
	Mr. Ricardo Tichauer, UNDP Resident Representative

Date	Places visited and persons interviewed
	Mr. Juan Pablo Corlazzoli, Director of the UNDP project for displaced persons, refugees and repatriated persons (PRODERE-Guatemala)
	Mr. Michel Gabaudan, representative of the Office of the United Nations High Commissioner for Refugees (UNHCR)
	Mrs. Marina Coronado de Noriega, president of the Journalists' Association of Guatemala
	Mr. Alvaro Colom, Executive Director of the National Fund for Peace (FONAPAZ)
	Members of the executive board of the coordinating committee of non-governmental organizations and cooperatives for assistance to people harmed by the internal armed conflict
2/10/1992	Mr. Eusebio del Cid, Minister of Health
	Brigadier-General José Domingo García Samayoa, Minister of Defence
	Mr. Francisco Perdomo, Minister of the Interior
	Mrs. María Luisa B. de Padilla, MInister of Education
	Mr. Gónzalo Menéndez Park, Minister for Foreign Affairs
	Visit, accompanied by the Human Rights Procurator, Mr Ramiro de León Carpio, to the shanty town on the edge of Guatemala City known as "El Mezquital"
	Dr. César Matzer, director of the El Mezquital health centre
	Mr. Juan Catú Otzoy, teacher, acting headmaster of the Sol Naciente school in the La Esperanza shanty town
	Priest of the Dios con Nosotros church
	Mrs. Liliana Estrada and Mrs. Marina Dueñas, members of the committee of the La Esperanza shanty town
	Mr. Pedro Rolando García Muralles and two other members of the committee of the El Esfuerzo shanty town
	Ms. Karen Hulsof, representative of UNICEF
	Mr. Manuel Conde Orellana and eight members of the Peace Commission (governmental)

Date	Places visited and persons interviewed
3/10/1992	Department of Huehuetenango
	Accompanied by Mr. Ramiro de León Carpio, Human Rights Procurator, the Expert visited the following places:
	Barillas
	Mr. Diego Tomás, local resident
	Mr. Samuel Pedro Antonio, chairman of the voluntary civil-defence committee
	Mr. Mateo Domingo Francisco, secretary of the Committee for the Conservation of the Mayan Language K'anjob'al
	Mr. Juan Hernández Pascual, second-in-command of the voluntary civil-defence committee
	Mr. Francisco Andrés, elected mayor of Barillas
	Mr. Silverio Chun, parish priest of the Catholic Church of Barillas
	Ms. Isabel Selles and members of the UNHCR office in Barillas
	Nentón
	Mr. José Samaniego, representative of UNHCR
	Ojo de Agua village
	Mr. Pedro Francisco, health worker
	Mr. Félix Méndez Pedro, leader of the civilian self-defence patrol
	Guatemala City
	Monsignor Rodolfo Quezada Toruño, President of the National Reconciliation Commission
4/10/1992	Accompanied by Mr. Ramiro de León Carpio, Human Rights Procurator, Mr. Juan Pablo Corlazzoli, Director of the UNDP project for displaced persons, refugees and repatriated persons (PRODERE-Guatemala), the Expert visited the following places:
	Yalpemech (Alta Verapaz)
	Mr. Eleazar Mantar, chairman of the development committee
	Mr. Avelino Lucero, human rights official

Date	Places visited and persons interviewed
	The Franciscan nuns Ruth García and Ligia Cartagena of the Cobán pastoral mission
	Mr. Alfredo Ramírez Ramos, in charge of the health centre
	Representative of CEAR
	Mr. Rogelio Barrios, representative of the Central American Development Association (ADEPAC)
	Xiul (municipality of Cunén, Department of El Quiché)
	Several members of the Runujel Junam Ethnic Communities Council (CERJ) and local indigenous peasants
	Commander of the local military base, Captain Federico Rivas Rico
	Vatzuchil (municipality of Nebaj, Department of El Quiché)
	Mr. Manuel de Paz, chairman of the local development committee
	Representatives of PRODERE
	Residents of the towns of Vatzuchil, Salvá la Leguna and Tzijulché
	Deputy Human Rights Procurator in Nebaj
	Guatemala City
	Mrs. Marie-Aude Lude, official of the International Committee of the Red Cross
	Mr. Ricardo Curtz and three other representatives in Guatemala City of the Standing Committees of Representatives of Guatemalan Refugees in Mexico
5/10/1992	Thirteen-hour working day with the President of the Republic, Mr. Jorge Serrano Elías, and his staff, including the following visits:
	Ciudad Peronia (Guatemala)
	Visit to three children's day-care community centres
	Huehuetenango
	Documentation centre of the Ad Hoc Committee for Aid to Returnees (CEAR)
	Huehuetenango departmental hospital (to be opened in March 1993)

Date	Places visited and persons interviewed
	Retalhuleu
	Workers' Recreation Institute (IRTRA)
	Nueva Olga María parcelamiento, municipality of Cuchuacán
	Guatemala City
	Children's assessment and location centre
	Presidential Palace
6/10/1992	Mr. Sergio Mollinedo, Director of the Ad Hoc Committee for Aid to Returnees (CEAR)
	Monsignor Avila, Chairman, and other members of the Mediating Agency for the return of refugees
	Representatives of the diplomatic corps and international organizations in Guatemala
	Press conference
	Departure from the country
	Mexico City
	Representatives of the Human Rights Commission of Guatemala
	Representatives of the UNHCR regional office in Mexico
7/10/1992	State of Chiapas (Mexico)
	Accompanied by the deputy representative of the UNHCR regional office in Mexico, the Expert visited the following places:
	San Cristóbal de Las Casas
	Mr. Avelino Ramírez and Mr. Alonso Diego, representatives of the Standing Committees of Representatives of Guatemalan Refugees in Mexico
	Mr. José Luis Ruíz, representative of the Christian committee of Comitán
	Representatives of UNHCR in Comitán
	Father Gónzalo Ituarte of the Christian Committee for Refugees
	Mrs. María Elena Morales, representative of the Organization for the Promotion of Community Services (PROSECO)

Date	Places visited and people interviewed
	Mrs. Margarita Gutiérrez López, representative of the Appropriate Technology Studies Centre for Mexico (CETAMEX)
	Mrs. Marisela Lucas, representative of the women's organization MAMA MAQUIN
	Mrs. Velia Morales and Mr. Abel Hidalgo Castillo, representatives of the Community Training and Development Organization (CADECO)
	Mrs. María José Hernández, representative of the Diocesan Committee for Assistance to Frontier Immigrants (CODAIF)
	Mr. Abraham Castañeda, doctor, representative of the Peasants Environment and Health Training Centre (CCESC)
	Mrs. Mercedes Olivera, representative of the Centre for Research and Action for Women in Latin America (CIAMAL)
	Mr. John Nelson, representative of the organization Permanent Action for Peace
8/10/1992	Gracias a Dios camp
	Working meeting with a representative of the Guatemalan refugees living in the camp
	Nueva Libertad camp
	Working meeting with a large number of representatives of the refugees living in the camp
	Comitán
	Mr. Raúl Nájera and Mr. Félix Cabrera, representatives of the Guatemalan Association of Dispersed Refugees (ARDIGUA)
	San Cristobal de las Casa
	Monsignor Samuel Ruiz, Bishop of the diocese
9/10/1992	Mexico City
	Mr. Rolando Morán and Mr. Rodrigo Asturias, commanders of the Unidad Revolucionaria Nacional Guatemalteca (URNG)
	Mr. Frías Insastegui, representative of the Mexican Commission for Assistance to Refugees (COMAR)